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# FEDERAL COMMUNICATIONS COMMISSION REPORTS

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Commissioner Fogarty's term expired June 30, 1983.
Commissioner Jones resigned May 31, 1983.
Commissioner Sharp's term expired June 30, 1983

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CC Docket No. 79–105

FCC 82–581

**Before the**

## Federal Communications Commission

**Washington, D.C. 20554**

| In the Matter of | |
|---|---|
| Amendment of Part 31, Uniform System of Accounts for Class A and Class B Telephone Companies, of the Commission's Rules and Regulations with respect to accounting for station connections, optional payment plan revenues and customer provided equipment and sale of terminal equipment. | CC Docket No. 79–105 RM–3017 |
| Petition for Declaratory Ruling on Question of Federal Preemption Involving Order Of the Public Utilities Commission of Ohio in Conflict with (i) FCC Prescriptions Under Section 220 of the Communications Act and (ii) Established FCC Policies. | |

MEMORANDUM OPINION AND ORDER

Adopted: December 22, 1982 Released: January 6, 1983

BY THE COMMISSION: COMMISSIONER FOGARTY ISSUING A SEPARATE STATEMENT.

1. The Commission has before it a Petition for Reconsideration filed on June 7, 1982, by the American Telephone and Telegraph Company, on behalf of itself and the associated Bell System Operating Companies (AT&T). AT&T seeks reconsideration of the Commission's decision in *Amendment of Part 31*, 89 FCC 2d 1094 (1982) (hereinafter cited as *Preemption Order)*, in which the Commission determined that Sections 220(a) and 220(b) of the Communications Act of 1934, as amended, 47 U.S.C. 220(a) and 220(b), did not preempt state commissions from applying different accounting and depreciation procedures for purposes of intrastate ratemaking proceedings.[1] The *Preemption Order* was a reconsideration of *Amendment of Part 31*, 85 FCC 2d 818 (1981) (hereinafter cited as *Expensing Order).*

2. The Commission also has before it a Petition for Declaratory Ruling filed on June 7, 1982, by General Telephone Company of Ohio (GTE of Ohio). This petition requests that the Commission preempt an order of the Public Utilities Commission of Ohio (Ohio) that denied GTE of Ohio the same depreciation rates for intrastate purposes as had been prescribed by this Commission. GTE of Ohio contends that Section 220(b) established the rate prescribed by the Commission as the only depreciation rate the company could utilize.

3. The Commission established a joint reply period for the two petitions, utilizing the pleading cycle for comments in response to the Petition for Reconsideration, and allowed parties to cross-reference their pleadings where appropriate. In addition to pleadings filed by the petitioners and the GTE parties, comments or reply comments were filed by the Arkansas Public Service Commission (Arkansas), Ohio, the People of the State of California and the Public Utilities Commission of the State of California (California), the Virginia State Corporation Commission (Virginia), the National Association of Regulatory Utility Commissioners (NARUC), the United States Independent Telephone Association (USITA), the Office of Consumers' Counsel, State of Ohio (Consumers' Counsel), the United Telephone System Inc. and the Idaho Public Utilities Commission (Idaho). A summary of the comments is contained in Appendix A. Below we consider the issues raised on reconsideration, after which we shall consider the question presented by GTE of Ohio's Petition for Declaratory Ruling.

---

[1] On June 8, 1982, GTE Service Corporation, on behalf of itself, United Telephone System, Inc., and Continental Telecom, Inc. (hereinafter referred to as GTE), filed a Petition for Clarification of the Commission's *Preemption Order.* This petition was dismissed as untimely. *Amendment of Part 31,* Mimeo No. 4766 (released June 24, 1982). However, the Commission stated that it would consider the substance of the petition in connection with AT&T's petition.

## *I. Background*

4. In *Docket No. 19129*, 64 FCC 2d 1, 54–56 (1977), we concluded that it would be desirable to have the causative rate payer bear the costs associated with station connections. We directed AT&T to file a plan for accomplishing this objective. Following AT&T's submission we initiated this proceeding, albeit with a somewhat different approach for modifying the accounting for station connections than proposed by AT&T.

5. After reviewing the comments, we concluded that the drop, block and protector portion of station connections should not be included in any accounting or regulatory revisions. We also concluded that our objective of placing the costs of station connections on the cost causative customer could not be achieved by means of an accounting change alone. This is so because costs associated with the provision of inside wiring must be apportioned between the federal and state jurisdictions as long as inside wiring is provided as a tariffed service subject to dual jurisdiction. Complete unbundling could be achieved by requiring inside wiring to be provided on a detariffed basis, as was done with customer premises equipment. Accordingly, we initiated a flurther inquiry ato explore the detariffing concept further, *Amendment of Part 31*, 86 FCC 2d 885 (1981).

6. Nevertheless, we concluded that changes in accounting and depreciation procedures that would begin expensing the inside wiring portion of the station connection account would be in the public interest, and would facilitate the deregulation of the provision of inside wiring if the Commission should later decide to take that approach. The principal changes required that future costs of installing inside wiring and similar costs be included as an expense in Account 605, Repair of Station Equipment. Such costs were previously capitalized in Account 232, Station Connections. The expensing of these costs would be phased in over a four year period unless a carrier obtained state commission approval to expense one hundred percent immediately. The *Expensing Order* also required that the present net investment in inside wiring and the investment capitalized during the phase-in period by amortized over a ten year period. These expensing and amortization rules replaced the depreciation procedures that had previously applied to the inside wiring portion of the station connections account.

7. On reconsideration, we concluded that the *Expensing Order* was not intended to preempt state commissions from utilizing other depreciation or accounting procedures for intrastate ratemaking proceedings, unless such preemption occurs as a matter of law. Our discussion was based in part on an assumption that most or all of the state commissions would follow our lead. We also indicated that Section 220 does not preclude state commissions from departing from accounting and depreciation rules prescribed by this Commission for purposes of regulating intrastate com-

munications services. In reaching this conclusion, we reviewed Section 20(5), the Interstate Commerce Act predecessor of the accounting and depreciation provisions contained in Section 220. We concluded that nothing in the history of Section 20(5) provided any indication of whether that provision had been intended to preempt state commissions from prescribing divergent depreciation rates when the Interstate Commerce Commission (ICC) had prescribed a rate. We stated:

> [i]nasmuch as Section 20 had never been construed to restrict state commissions from requiring carriers to keep additional records for purposes of intrastate ratemaking and court decisions in analagous contexts did not adopt an expansive interpretation of that provision, the reenactment of that language should not be interpreted to restrict state commissions from keeping such additional records in the absence of clear evidence that the 1934 Congress intended to produce that result.

*Preemption Order, supra* at 1102.

8. We also reviewed the legislative history of the Communications Act and concluded that Congress had been uncertain of the preemptive effect of reenacting the Interstate Commerce Act language and that it apparently did not want to resolve the question at that time. We concluded that Congress had been attempting to obtain as much uniformity as possible without coercing any state commission to use ratemaking methods which it might find unacceptable. We found that we had proceeded in a manner consistent with this purpose for nearly four decades, noting that we had recognized divergent practices by state commissions from time-to-time. The language of Section 2(b)(1) was found to support the interpretation that state commissions are not precluded from applying different accounting and depreciation procedures from this Commission. The *Preemption Order* concluded by finding that nothing in the Act precluded us from preempting state commission actions that might interfere with or tend to frustrate policies or rules we have adopted to carry out statutory objectives with respect to interstate or foreign communications, but we also found that federal regulation would not be frustrated if carriers maintain additional records for intrastate ratemaking purposes.

## *II. Discussion*

9. The question presented in the reconsideration petition is a clearly delineated controversy over whether Section 220(b) preempts state depreciation prescriptions that are inconsistent with the rates prescribed for classes of property by this Commission, or, whether Section 2(b)(1) or Section 221(b) reserve to the states the right to prescribe their own depreciation rates for intrastate regulatory purposes. Alternatively, it is argued that the Commission should preempt inconsistent state depreciation rates pursuant to its authority to preempt state actions which would frustrate or interfere with the accomplishment of federal objectives. *See*

*North Carolina Utilities Commission v. FCC*, 537 F.2d 787 (4th Cir. 1976), *cert. denied*, 429 U.S. 1027 (1976) (hereinafter cited as *NCUC I*). The *Preemption Order* was the first time the Commission had squarely addressed the preemptive effect of a prescribed depreciation rate, despite having prescribed rates for more than thirty years. No federal court has addressed the question of the preemptive effect of a Commission prescribed depreciation rate.[2]

10. It is argued that the Commission erred in the earlier decision by concentrating on Sections 220(a) and 220(g) rather than properly analyzing Section 220(b), the provision dealing directly with depreciation. A careful review of AT&T's and GTE's pleadings and a thorough reevaluation of the entire question of the Commission's depreciation jurisdiction leads to the conclusion that the evaluation in the *Preemption Order* did not sufficiently consider the effect of Section 220(b). Accordingly, we shall undertake to evaluate anew the scope of the Commission's jurisdiction under Section 220(b).

11. Before turning to the analysis of the statutory provisions, it is necessary to understand the relationship between capitalizing and expensing a transaction or economic event. When an event is capitalized, its cost is recorded on the company's books to be recovered over some future period through depreciation charges to operating expense. Depreciation as used here is an accounting convention for allocatively spreading the original cost, less net salvage, over the useful life of a capital asset. Thus, for there to be depreciation there must be costs that are to be recovered over more than one accounting period. However, when the decision to expense is made, all costs are to be recovered at one time. Thus, the decision to expense is a determination that there is no category of asset for which depreciation expense will be allowed. It is therefore clear that the decision to commence expensing the inside wiring portion of station connections involves questions of depreciation policy.

12. The law is clear that federal requlation should not be presumed to preempt state regulations without clear evidence of either congressional design to preempt the field or that state regulatory activities would obstruct the accomplishment and execution of the full purposes and objectives of Congress. *Florida Lime and Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 141 (1963), *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941). Our review reveals that both criteria are satisfied in this case. In reaching this conclusion we analyzed the language of Section 220, the legislative history, relevant court cases, and our regulatory objectives.

---

[2] The United States Supreme Court has held that state commissions may prescribe depreciation rates where the empowered federal commission has not prescribed rates. *Northwestern Bell Telephone Co. v. Nebraska State Railway Comm.*, 297 U.S. 471 (1936). The Court specifically reserved judgment on the effect of prescribed rates by the federal commission.

A. *Statutory Language*

13. The Commission's express jurisdiction with respect to depreciation is set forth in Section 220(b). That section provides:

> The Commission shall, as soon as practicable, prescribe for such carriers the classes of property for which depreciation charges may be properly included under operating expenses, and the percentages of depreciation which shall be charged with respect to each of such classes of property, classifying the carriers as it may deem proper for this purpose. The Commission may, when it deems necessary, modify the classes and percentages so perscribed. Such carriers shall not, after the Commission has prescribed the classes of property for which depreciation charges may be included, charge to operating expenses any depreciation charges on classes of property other than those prescribed by the Commission, or, after the Commission has prescribed percentages of depreciation, charge with respect to any class of property a percentage of depreciation other than that prescribed therefor by the Commission. No such carrier shall in any case include in any form under its operating or other expenses any depreciation or other charge or expenditure included elsewhere as a depreciation charge or otherwise under its operating or other expenses.

14. The plain language of the statute is express and unequivocal. Section 220(b) says the Commission "shall" make depreciation prescriptions, and that carriers "shall not" charge depreciation different than that prescribed by the Commission. That this preempts inconsistent state action is further indicated in Section 220(h) which gives the Commission discretion to "except" carriers from the requirements of Section 220 "where such carriers are subject to state commission regulation."

15. The requirement of Section 220(i) that states be given an opportunity to comment before the Commission prescribes "any requirements as to accounts, records and memoranda" is consistent with an interpretation that states are preempted when the Commission has acted in the depreciation area. By providing that states be given notice, Congress ensure that state needs for accounts, records and memoranda brought to the Commission's attention would be considered. Such a procedure assures that the states' needs and legitimate interests are met.

16. In setting the duties of the Commission and the prohibitions on the carriers subject to the Act, Congress spoke of depreciation in general terms without any attempt to make distinctions between either "intrastate" or "interstate" property. This is significant because when Congress wanted to make such distinctions in the Act it did so. See, *e.g.*, 47 U.S.C. 221(c) and (d), and 410(c). The fact that Congress did not make such a distinction here indicates that it intended no distinction.

17. Taken as a whole, the language of Section 220 appears clearly to preempt the states in connection with depreciation expense determinations and the related accounting. The language strongly implies that the states may not depart from depreciation rules prescribed by the FCC unless the Commission in its discretion allows them to do so. Otherwise,

the federal statute would govern state depreciation practices in form only, allowing the states to treat substantive depreciation matters as they might choose. While that might be a plausible construction of Section 220, after full analysis we do not believe that Congress intended such a feeble gesture. There would be little purpose to require the carriers to keep all their books pursuant to an FCC prescription, and then allow the states to require the carriers to follow inconsistent depreciation practices. Instead, the language of the section and the comprehensive treatment given to this matter by the Congress demonstrate that more was intended. Accordingly, we find that the statutory language indicates that FCC depreciation prescriptions are to be followed in both the federal and state jurisdictions unless the FCC provides otherwise. As demonstrated below, this construction is also consistent with the legislative history.

B. *Legislative History*

18. In the *Preemption Order* we found that the legislative history of Section 220 was inconclusive and at most indicated that Congress was "not sure" about the preemptive effect of the new legislation. 89 FCC 2d at 1106. However, the reconsideration petition and comments supporting it show that Congress believed that the language ultimately adopted would preempt the states from prescribing depreciation rates for subject carriers when the Commission had prescribed rates.

19. In our *Preemption Order,* we observed that Section 220 of the Communications Act had been adopted from Section 20 of the Interstate Commerce Act, and our review of the few ICC cases touching upon preemption did not reveal the ICC to have possessed the kind of broad preemptive power now urged by GTE and AT&T. However, after reviewing the pre-1934 cases again, we find that, while not dispositive, they lean more toward GTE and AT&T's views than against them.

20. The closest the ICC came to delineating its position on this matter came in *Depreciation Charges of Telephone Companies,* 118 I.C.C. 295, 332 (1926), where it said:

> It seems to be well established that where a local telephone company undertakes to originate or deliver toll messages, and most of them do so undertake, practically all of its property is open for use in interstate commerce and at any time may be so used. Under such circumstances, no doubt would seem to exist as to the power of Congress to regulate the accounting practices of such companies with respect to their property, including the accounting for depreciation.

In the *Preemption Order* we focused on the fact that the ICC had not actually prescribed depreciation rates and thus there was uncertainty regarding the ICC's actual authority. However, after reviewing that case again we find that the better and more sensible interpretation is that if the ICC had prescribed depreciation rates, the state commissions would have

been precluded from prescribing rates that diverged from those it prescribed. We cited *Smith v. Illinois Bell Tel. Co.*, 282 U.S. 133, 159 (1930), in the *Preemption Order* as supporting our conclusion that the ICC decision did not preempt the states. In that decision the Supreme Court held that absent ICC action prescribing depreciation rates, Section 20(5)did not preclude states from prescribing depreciation rates. Since the ICC proceeding did not actually prescribe depreciation rates, but only began a proceeding looking toward the ultimate prescription of depreciation rates, there were no depreciation rates prescribed that could have preempted state-prescribed depreciation rates. Thus *Smith* only stands for the proposition that until the ICC actually prescribed rates, there was no basis for preempting the states. It did not reach the question of whether Section 20(5) would preempt the states if the ICC prescribed depreciation rates.[3]

21. At the hearings pertaining to the Communications Act the then chairman of the ICC indicated his belief that the ICC depreciation rulings would govern both federal and state depreciation practices:

> Paragraph (j) . . . should be most carefully considered. It unquestionably directly conflicts with, and destroys the uniformity of systems of accounts and depreciation accounting required by the preceding provisions of the section. That is not true under the present law.[4]

22. Other witnesses who appeared at the hearings repeated the same view. See statements of Mr. Gifford,[5] Mr. Benton,[6] and Dr. Irvin Stewart.[7]

23. The *Preemption Order* relied havily on the "silence contained in the Congressional Reports," 89 FCC 2d 1105, in concluding that the legislative history did not support a finding that Section 220 was intended to preempt state commissions from prescribing their own depreciation rates for intrastate purposes. However, a reexamination of the legislative history in light of the comments on reconsideration indicates that the committee reports accompanying the bills did contain language indicating that the committees believed that the predecessor provision had preempted the states. The House Report, in discussing the Section 220(j) provision

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[3] Similarly, *Interstate Commerce Commission v. Goodrich Transportation Co.*, 224 U.S. 194 (1912) and *Kansas City Southern Ry. Co. v. I.R.S.*, 52 F. 2d 372 (8th Cir. 1931) do not appear to have any pertinance to the issue at hand. As noted in 89 FCC 2d at 1099, *Goodrich* did not raise any question with respect to the effect of ICC accounting rules upon activities not subject to ICC rate regulation. The *Kansas* holding simply reconciles two federal statutes, the Internal Revenue Code and the Interstate Commerce Act. It did not purport to establish new law on state preemption.

[4] Ltr. of F. McManamy, Hearings on S. 2910, p. 208.

[5] Hearings on H.R. 8301, pp 191–192 (See 89 FCC 2d at 1105, fn.17). The *Preemption Order* had indicated that Mr. Gifford's preemption views were tentative. However, careful review of that testimony reveals that Mr. Gifford's uncertainty may have concerned the date Section 20(5) was enacted, not preemption.

[6] Hearings on S. 2910, 73rd Cong., 2d Sess., p. 181 (1943).

[7] Hearings on H.R. 8301, 73rd Cong., 2d sess., p. 17 (1934).

(which was not adopted) that would have reserved jurisdiction over depreciation rates to the states for purposes of intrastate ratemaking, stated that the provision was "responsive to the requests of the State commissions that the present law be *changed so as to permit* those bodies to exercise, forState purposes, certain jurisdiction over . . . depreciation accounting."[8]

24. In remarks on the House floor, Representative Rayburn, Chairman, House Committee on Interstate and Foreign Commerce explained Section 220 of the proposed bill as follows:

> [p]aragraphs (a) to (g), relating to accounts records, memoranda, and depreciation, is based upon sections 20(5) to (8) of the Interstate Commerce Act with *changes necessary to permit State commissions to prescribe* the systems of accounts for the intrastate operation of carriers. Paragraphs (h) to (j) are new . . . *paragraph (j) removes any limitation upon the power of a State commission to prescribe, for the purposes of the exercise of its jurisdiction, rates of depreciation.* The last three paragraphs named were placed in the bill at the request of the State commissions which feel that their task of regulating intrastate communications will be greatly facilitated by the adoption of these paragraphs.[9]

25. The Senate version of Subsection (j) took a totally different approach than the House version. It called "for investigation and report to Congress instead of immediately turning over these matters to the State." S. Rep. No. 781, 73rd Cong., 2d Sess. 5 (1934).[10] The version of Section 220(j) finally enacted was the result of agreement in the conference committee. The conferees agreed to adopt the House provisions as to Sections 220(h) and (i), but decided against the House Section 220(j) proposal to remove any limitation upon the power of states to prescribe rates of depreciation. Instead, Section 220(j) was modified along the lines of the Senate proposal to require the Commission to "investigate and report to Congress as to the need for legislation to define or further

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[8] H.R. Rep. No. 1850, 73rd Cong., 2d Sess. 7 (1934) (emphasis added). The section (j) proposed by the House would have provided: "Nothing in this section shall (1) limit the power of a State commission to prescribe, for the purposes of the exercise of its jurisdiction with respect to any carrier the percentage rate of depreciation to be charged to any class of property of such carrier, or the composite depreciation rate, for the purpose of determining charges, accounts, records, or practices; (2) relieve any carrier from keeping any accounts, records, or memoranda which may be required to be kept by any State commission in pursuance of authority granted under State Law." H.R. 8301, 73rd Cong., 2d Sess. Section 220(i) (February 27, 1934).

[9] 78 Cong. Rec. 10314 (1934) (emphasis added).

[10] The Senate version of Section 220(j) provided: "The Commission shall investigate and report to the Congress whether in its opinion legislation is desirable (1) authorizing the Commission to except the carriers of any particular class or classes in any State from any of the requirements under this section in cases where such carriers are subject to State commission regulation with respect to matters to which this section relates; and (2) permitting the State commissions, in purusance of authority granted under State Law, to prescribe their own percentage rates of depreciation or systems of accounts records, or memoranda to be kept by carriers." S. 3285, 73rd Cong., 2d Sess. Section 220(j) (March 28, 1934).

harmonize the powers of the Commission and of State commissions with respect to other matters to which this section relates." Conf. Comm. Rep. No. 1918, 73rd Cong., 2d Sess. 17 (1934). The obvious inference to be drawn is that the conferees were not prepared at that time to allow the states to prescribe depreciation rates different than those established at the federal level, but that matter might be considered later if the report required by Section 220(j) indicated it to be appropriate.

26. The hearing testimony and Committee reports therefore indicate that the language being recodified from Section 20(5) of the Interstate Commerce Act preempted the state commissions' jurisdiction over depreciation. The rules of statutory construction provide that where Congress reenacts a provision from an existing statute, it intends that the construction applicable to the existing provision apply as well to the new provision.[11] The legislative history thus supports the actual language of Section 220(b) and indicates that Congress intended to preempt state commission jurisdiction over depreciation rates for subject carriers when it recodified the language from the Interstate Commerce Act. Accordingly, we conclude that the analysis of the legislative history contained in the comments of AT&T and GTE accurately represents the intent of Congesss and that the more persuasive reading of the legislative history supports the construction that Section 220(b) preempts inconsistent state action where the Commission has prescribed depreciation rates for a carrier.

C. *Administrative and Court Decisions*

27. The *Preemption Order* cited *Accounting Rules for Telephone Companies*, 203 ICC 13 (1934), as evidence that the FCC could not preempt state depreciation practices. There the ICC recognized that states might have additional accounting needs and indicated that it had permitted state-prescribed sub-accounts within the federally-required books of account. However, the adoption of a blanket subdivision rule does not lead to the conclusion that federally adopted accounting and depreciation rules are not preemptive. Rather, it reflects an awareness that state commissions may have special data requirements to properly administer their regulatory policies which may require additional detail beyond that prescribed by the federal agency. A subdivision rule, however, does not permit what is accounted for as an expense to be capitalized in the guise of subdividing an expense account. While we may allow subdivisions of accounts, we will not allow inconsistent accounting or depreciation methods unless such practices are otherwise consistent with the public inter-

[11] Courts have given weight to interpretations of the Interstate Commerce Act in interpreting the Communications Act. See, *e.g.*, *American Telephone and Telegraph Company v. FCC*, 487 F.2d 865 (2d Cir. 1973).

est. Any other policy would obliterate the prescriptive effect of our adoption of a uniform system of accounts.

28. In fact we have approved variations from the prescribed uniform system of accounts. For example, our rules give carriers blanket authority to subdivide certain prescribed accounts "provided such subdivisions do not impair the integrity of the accounts prescribed." 47 C.F.R. 31.01–2(d)(1). C.F. 31.01–2(f), authorizing carriers to subdivide accounts "in the manner ordered by any state commission having jurisdiction . . . ." We also have approved state commission rate making treatment of plant under construction different from that adopted by us. See 89 FCC 2d at 1107.

29. There may well have been some instances of inconsistent state treatment of depreciation in the past. However, we do not seek controversy unless it is necessary to protect vital federal interests. Either such instances did not come to our attention or they may not have appeared threatening to federal interests.[12] In the past the communications marketplace was typified by monopoly conditions and life and salvage factors underlying the state rates were generally very similar, if not identical, to those used by the Commission. In that environment it was not essential that the Commission assert all the authority granted it. See *Computer and Communications Industry Association v. FCC*, No. 80–1471 (D.C. Cir. November 12, 1982). As discussed, *infra.*, in the more competitive conditions prevailing today, the utilization of proper methods and rates is more critical if the proper incentives are to be created to insure that the marketplace will function efficiently to bring the benefits of the competition to the ratepayers of this country. Therefore, where it is necessary to protect important federal policies against frustration by inconsistent state actions, we will exercise the full breadth of our depreciation powers. *See* para. 14 above.

30. Nor is there any merit to the argument that federal preemption of depreciation practices constitutes intrastate ratemaking which might run afoul of 47 U.S.C. 152(b). Section 220(b) only prohibits the states from setting depreciation rates for telephone property inconsistent from those prescribed by the FCC. It does not require that any particular tariff for intrastate service be accepted by the state commissions. The setting of depreciation rates and classes of depreciable property only resolves a single issue impacting the ratemaking process. It does not restrict the state commission's broad discretion in setting charges for individual services. In any event, Section 2(b) of the Act, 47 U.S.C. 152(b), has a well defined purpose which would not be implicated here: "to restrain the

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[12] *Pacific Telephone and Telegraph Company v. California*, 401 P. 2d 353 (1965), was cited in the *Preemption Order* to support nonpreemption. However, the California Supreme Court did not analyze Section 220(b) or its legislative history and its determination is therefore unpersuasive.

Commission from interfering with those essentially local incidents and practices of common carriage by wire that do not substantially encroach upon the administration and development of the interstate telephone network." *NCUC I, supra* at 794 n.6. Here the setting of depreciation rates is not an essentially local incident or practice and it has substantial effects upon the administration and development of the interstate telephone network.[13]

D. *Preemption Under Federal Supremacy*

31. Even if one were to assume that Section 220(b) did not automatically preempt the states whenever this Commission has acted, federal preemption of inconsistent state depreciation would be justified in this case to avoid frustration of validly adopted federal policies. The Fourth Circuit has stated:

> We have no doubt that the provisions of section 2(b) deprive the Commission of regulatory power over local services, facilities and disputes that in their nature and effect are separable from and do not substantially affect the conduct or development of interstate communications. But beyond that, we are not persuaded that section 2(b) sanctions any state regulation, formally restrictive only of intrastate communication, that in effect encroaches substantially upon the Commission's authority under sections 201 through 205.

*NCUC I, supra* at 793. To the same effect, see *Computer and Communications Industry Association v. FCC, supra* at 35.

32. The D.C. Circuit recently addressed the preemption question, observing:

> We fail to see any distinction in this case between preemption principles applicable to state ratemaking authority and those applicable to other state powers. The operative principle [is that]. . . preemption of state tariffs on CPE is justified because state tariffs would interfere with the consumer's right to purchase CPE separately from transmission service and would thus frustrate the validly adopted federal policy.

*Id.* at 38. The court went on to find that conflicting state regulation may be preempted even though there is some indirect effect on state ratemaking discretion, noting:

> the Act itself does not distinguish between authority over rates and authority over other aspects of communications. Sections 2(a) and (b) of the Act allocated federal and state authority with regard to both "charges [and] . . . facilities." Therefore, conflicting

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[13] Nor is federal preemption of depreciation practices inconsistent with 47 U.S.C. 221(b). Section 221(b) was intended to reserve state jurisdiction over exchange rates where exchange boundaries extend over two states. That provision was not intended to create new reservations to the states beyond that contained in Section 2(b) and the narrow circumstance encompassed by interstate exchanges. See *Computer and Communications Industry Association v. FCC, supra*, and *North Carolina Utilities Commission v. FCC, 552 F.2d 1036, 1046 (4th Cir. 1976), cert. denied*, 434 U.S. 874 (1977) (hereinafter cited as *NCUC II*).

> federal and state regulations regarding dual use CPE are no more acceptable under the Act when equipment rates are involved, as here, than when interconnection policies are involved, as in the *NCUC* cases.

*Id.* at 38–39.

33. The provision for adequate capital recovery is important to "make available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide, world-wide wire and radio communication service with adequate facilities at reasonable charges . . . ." 47 U.S.C. 151. State depreciation rate prescriptions that do not adequately provide for capital recovery in the competitive environment, which constitutes this Commission's policy in those markets found capable of supporting competition, would frustrate the accomplishment of that policy and are preemptable by this Commission.

34. Over the past decade the Commission has embarked in several areas of telecommunications to pursue a policy of encouraging competition wherever the market conditions will support such a policy and produce benefits to the public interest. In *MTS-WATS Market Structure Inquiry,* 81 FCC 2d 177 (1980), the Commission opened the domestic MTS-WATS market to competitive entry, reserving the question of entry to Alaska to a later phase since concluded with the adoption of a similar open entry policy, *MTS-WATS Market Structure Inquiry,* FCC 82–515 (released November 30, 1982). In *Computer Inquiry II,* 77 FCC 2d 384 (1980), *recon.*, 84 FCC 2d 50 (1980), *recon.*, 88 FCC 2d 512, *aff'd subnom., Computer and Communications Industry Association v. FCC, supra,* the Commission opened the areas of enhanced services and customer premises equipment to competitive provision. These are just two examples of the policies which the Commission has pursued. However, they do point up the fact that if this policy is to be successful, it will be necessary for the marketplace to operate efficiently. Such efficient operation requires proper price signals generating from supply and demand conditions.

35. Capital recovery is an important determinant of the price at which services can be offered and significantly affects the amount of facilities provided to supply the needs of the communications industry. In *Amendment to Part 31,* 83 FCC 2d 267 (1980), *recon.*, 87 FCC 2d 916 (1981), the Commission adopted remaining life and straight line equal life group depreciation methods that recover capital on a basis that approximates straight line unit depreciation more closely than did the previously used methods. More timely capital recovery was anticipated to result in faster technological innovation with its accompanying benefits of more efficient service provision and lower costs resulting from more productive use of facilities.

36. Capital recovery issues are important in the implementation of *Computer Inquiry II* due to the part depreciation plays in the determina-

tion of net book value and the resultant gain or loss that may occur on the transfer of assets to the new subsidiary. It will also be significant in any later transfer of assets from the provision of regulated service to unregulated service or vice-versa. Thus, appropriate capital recovery will ease the regulatory burdens associated with supervising the transition to the new structure.

37. Depreciation is a significant portion of the revenue requirement of the regulated telephone companies. As such, it plays an important role in determining the price at which they offer their services. If competition is to be viable, it is necessary for prices to reflect depreciation expenses that are realistic for a competitive market. Absent such depreciation levels, improper signals will be given to the market. Since most plant is used interchangeably to provide interstate and intrastate communications service, supply and demand is determined by the combination of inputs from service demand in both regulatory jurisdictions. Approximately 75 percent of exchange plant is allocated to the intrastate jurisdiction. It is clear that unless telephone plant, including that portion subject to allocation to the intrastate jurisdiction, is depreciated at a reasonable rate, improperly time capital recovery will occur. Indeed, in a increasingly competitive environment, it is possible that improper capital recovery could delay or prevent modernization which would add to the costs borne by ratepayers and could, ultimately, threaten carriers' ability to fully recover their invested capital. Moreover, the extent of state action attempting to prevent carriers from utilizing our depreciation prescriptions places substantial burdens on carriers and could well impair their ability to raise the investment capital they will need to fully compete in the continually evolving competitive telecommunications marketplace.[14] Such a result could undermine the achievement of the Commission's objective to develop policies that will engender a dynamic, efficient telecommunications marketplace with services being provided at reasonable prices.

38. NARUC contends that preemption with respect to station connections is unnecessary and will not produce competitive benefits because expensing is not the same as unbundling. While NARUC is correct in a strict sense, it avoids the critical issue, which is the proper timing of cost recovery. If the Commission preempts with respect to station connections

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[14] AT&T and GTE indicate several state commission have refused to follow, have indicated an intent not to follow, or are being urged not to follow Commission determinations with respect to the expensing of inside wiring and/or the adoption of straight-line equal life group or remaining life depreciation methods. A staff review of state action in conjunction with AT&T intrastate tariff proceedings reveals that all but two states have approved expensing of station connections, that 13 states have rejected and 12 have approved equal life group depreciation, and that 9 states have rejecte and 22 have approved remaining life group depreciation. Prior to issuing our *Order* in this docket we did not expect that such significant variance would be required by states.

and all states must expense these costs, current ratepayers will be paying these costs instead of future ratepayers as would be the case with captalization. Thus, future prices will reflect the appropriate costs for providing those services. Moreover, if these costs are expensed and state commissions must allow rates to cover these costs, it is likely that the cost causative ratepayer will in many cases be charged for the costs being expensed in connection with the provision of inside wiring. Thus, the Commission's objective may be substantially achieved by preempting state commissions from departing from our expensing rules.

39. In 1971 Congress amended the Communications Act to change the procedures for allocating costs between federal and state jurisdictions by adding Section 410(c). The Commission was given the ultimate authority with respect to such allocations, further solidifying its superintendency over common carrier communications. See *NCUC I*, *supra* at 795. Section 410(c) procedures provide for uniformity in the separations process, thereby insuring that plant, expenses and revenues will be rationally accounted for in the dual jurisdictional environment. The utilization of one depreciation rate is the most effective method for insuring that this uniformity will be maintained and to insure that no jurisdiction bears a greater burden than another in the transition to a fully competitive marketplace. Several parties suggest that under or over recovery will result from one jurisdiction or another because of the shifting usage patterns for telephone plant over time and argue that if such a result were to occur, significant inequities would result to both ratepayers and carriers. A uniform depreciation rate for each class of property applicable to all property whether allocated to the federal or state jurisdiction clearly eliminates these potential problems.

40. For all of these reasons, it is apparent to us that a substantial impact on federal policies could result if state commissions were allowed to diverge from Commission prescribed depreciation rates and practices. Accordingly, it is essential to preempt inconsistent state depreciation practices to avoid frustration of these vital national policies.

### *III. Declaratory Ruling Petition.*

41. GTE of Ohio seeks to have the Commission preempt an order of the Ohio Public Utilities Commission that did not approve remaining life and equal life group rates for intrastate ratemaking purposes. As alleged by GTE of Ohio, the differential in rates amounts to seven million dollars per year. GTE of Ohio states that failure of this Commission to preempt the state will frustrate the achievement of federal policies adopted by this Commission. Its argument is similar to those cited in connection with the reconsideration petition.

42. Essentially the same arguments are made against the GTE of Ohio petition as were urged on reconsideration with regard to the substance of

the issue. However, Ohio cites an Ohio statute that precludes the state commission from adopting remaining life depreciation for intrastate purposes.

43. One procedural argument is raised by Ohio with respect to the petition. It contends that the question presented is premature since the order is subject to further reconsideration before the Ohio Commission pursuant to a request filed by GTE of Ohio. We do not agree since the purpose of declaratory rulings is to give guidance to affected persons in areas where uncertainty or confusion exists. A case or controversy in the judicial sense is not required, *NCUC I*, *supra* at 790–1. In this case, it appears necessary to issue such a ruling to clarify for the state commissions and the carriers the effect of our depreciation prescriptions. The fact that reconsideration proceedings are under way in Ohio does not mitigate against such a course in light of the divergencies from this Commission's depreciation methods and rates that are occurring to the detriment of federal policies. Thus, we find it imperative to declare today that inconsistent state prescribed depreciation rates are preempted by the Communications Act and are accordingly void. The existence of a state statute preventing a state commission from adopting a particular method does not affect this determination. When federal preemption is involved, there is no difference between a statute or a regulation of a state commission. Both must fall in the face of overriding federal concerns and policies.

## *IV. Conclusion*

44. We have carefully reviewed the record upon reconsideration. The issues raised concerning the *Preemption Order* caused us to reevaluate the statutory language of Section 220(b), the legislative history of the provision, and the relevant judicial and administrative proceedings relating to the subject. Our considered judgment after this review is that the *Preemption Order* must be reconsidered. We find that the most logical and reasonable interpretation of Section 220(b) of the Act is that where the Commission prescribes depreciation rates for classes of property, state commissions are precluded from departing from those rates. Since the depreciation method utilized is a material part in determining the rate to be applied, state commissions are also precluded from departing from the depreciation methods prescribed by the Commission. Thus, the *Expensing Order* is binding upon state commissions and they must expense additions to inside wiring in accordance with the plan established therein. Moreover, they must follow the amortization procedures adopted in that decision for the embedded inside wiring and any additions to the capitalized amount as a result of the phase-in of the expensing of inside wiring.

45. Even if Section 220(b) does not preempt state commissions, we would act under our authority to preempt state actions that interfere with the accomplishment of federal policies and objectives. *Computer and Communications Industry Association v. FCC, supra,* and *NCUC II.* We note that petitioner and the parties supporting the petition cite several states that have indicated they do not intend to follow the Commission's depreciation prescriptions or expensing of inside wiring, or have refused to follow either. In light of the concerns expressed about an efficiently functioning market, we must find that inconsistent depreciation rates prescribed by state commissions will interfere with the efficient operation of the communications marketplace and thereby frustrate the achievement of the Commission's policies. Accordingly, we find that this Commission's depreciation policies and rates, including the expensing of inside wiring, preempt inconsistent state depreciation policies and rates.

46. Accordingly, IT IS ORDERED, pursuant to Section 1, 4(i), and 220(b) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), and 220(b), That the Petition for Reconsideration filed by the American Telephone and Telegraph Company IS GRANTED.

47. IT IS FURTHER ORDERED, That the Petition for Declaratory Ruling filed by General Telephone Company of Ohio IS GRANTED to the extent reflected herein.

48. IT IS FURTHER ORDERED, That the Secretary shall cause this order to be published in the Federal Register.

49. IT IS FURTHER ORDERED, That the Secretary shall cause a copy of this order to be served on each state commission.

FEDERAL COMMUNICATIONS COMMISSION

William J. Tricarico *Secretary*

*Appendix A. Summary of Comments*

1. AT&T argues that the Commission on reconsideration should find that state commissions are precluded from departing from the depreciation methods and rates established by this Commission in order to allow the carriers to achieve timely capital recovery. It views the *Preemption Order* as a retreat from the Commission's competitive policies.

2. AT&T asserts that realistic depreciation rates are essential to attain accurate cost-based pricing decisions to prevent artificial barriers to competition, to foster technological innovation which will enhance network efficiency and the availability of competitive alternatives, to facilitate the timely implementation of the detariffing of customer premises equipment[1] and to insure the financial viability of the carriers. It

[1] It contends that different depreciation rates between jurisdictions will result in disagreements about net book value in deregulating CPE and that the application of the Separations Manual will create uncertainty as to which plant a particular book value relates.

contends that competitive conditions result in faster obsolescence and shorter asset lives, requiring that depreciation methods and rates be inseparable from ratemaking to insure capital recovery.

3. AT&T proposes two legal theories for preempting state commission action. First, it asserts that the Commission may preempt under Sections 1 and 2 of the Act, citing *California v. FCC*, 567 F.2d 84, 86 (D.C. Cir. 1977), *cert. denied*, 434 U.S. 1010 (1978), *NCUC II*, *NCUC I*, and *NARUC v. FCC*, 533 F.2d 601 (D.C. Cir. 1976). It states that because of the central role depreciation, including the depreciation aspects of station connections, plays in the achievement of the Commission's policies, preemption is necessary to avoid interference with or frustration of these policies.

4. AT&T's second theory is that Section 220(b) preempts states on its face, asserting that in its earlier pleadings it did not rely on Section 220(g) as suggested by the Commission's decision. It argues that Section 220 gives the Commission discretion with respect to accounting rules, but does not give it such discretion with regard to depreciation prescriptions. AT&T states that the Commission's rule allowing carriers to subdivide an account to comply with a state commission order does not mean that a state can require capitalization when this Commission requires expensing. Finally, it submits that the Commission misread the legislative history of the Communications Act by failing to consider statements in the committee reports and remarks of members at committee hearings that indicate Congress believed the Interstate Commerace Act provisions from which Section 220(b) was taken did in fact preempt the states. See also *Depreciation Charges of Telephone Companies*, 118 I.C.C. 295 (1926).

5. GTE asserts that the Commission's policies in the areas of competition and faster capital recovery will be frustrated if the state commissions are allowed to depart from the depreciation rates and methods prescribed by the Commission. It contends that Section 220(b) preempts the states and distinguishes Section 220(a) as being discretionary on the Commission and argues that the Commission focused only on the provisions of Section 220(a) in its earlier decision. It submits that there is no doubt that a state can require a carrier to keep additional records and memoranda. However, GTE argues that the Commission's decision is overly broad. It is clear, GTE contends, that the Commission can preempt inconsistent state action when it conflicts with national telecommunications policies, and it should do so in this case. GTE also argues that the legislative history and the rules of statutory construction indicate that Congress intended to preempt the states in the area of depreciation, submitting that property cannot be successfully depreciated at two different rates prescribed by different regulatory bodies because under or over recovery from one or the other jurisdiction will occur from the use of shifting usage factors.

6. The oppositions generally argue that the states have the jurisdiction to determine the extent to which intrastate rates reflect depreciation and expensing adjustments promulgated by the Commission. Sections 2(b) and 221(b) are cited as reserving jurisdiction over local and intrastate telephone rates to the states as intended by Congress when it distinguished between "interstate" and "intrastate" in Sections 1 and 2. Ohio argues that the preemption argument was rejected in the only case of which it is aware, *Pacific Telephone and Telegraph Company v. California*, 401 P. 2d 353 (1965).

7. Ohio asserts that the courts have distinguished between ratemaking and interconnection policies, *NCUC II* and *NCUC I*, and submits that it is the ratemaking jurisdiction reserved to the states that is in question in this proceeding. To permit the

Commission to prescribe depreciation rates applicable to all property whether used for interstate or intrastate services would, in Ohio's view, be equivalent to giving the FCC a hand in setting state rates.

8. Ohio is concerned that under some methods, such as remaining life, costs will not be charged to consumers who receive the benefits of the property being depreciated. Finally, it contends that Sections 220(i) and (j) are consistent with concurrent jurisdiction.

9. Ohio argues that GTE is attempting to have the Commission read Section 2(b) out of the Act, and asserts that it is inappropriate to ignore language in a statute, to extend a statute beyond its clear import, or to embrace subjects not specifically enumerated. Section 2(b)(1) is stated by Ohio to have been intended to reverse the Supreme Court decision in *Houston East and West Texas Ry. v. U.S.*, 234 U.S. 342 (1914), wherein the ICC was given the power to suspend intrastate rates enabling carriers to raise intrastate rates to federal levels for similar distances. NARUC and Ohio argue that Section 2(b) was intended to ensure that state jurisdiction was not limited by the 1934 legislation.

10. Several parties assert that there is considerable Commission precedent recognizing the states' independent ratemaking authority, including departures from Commission prescribed accounting, for intrastate rates. They note that the Commission has encouraged state commissions to devote more resources to depreciation matters, *Amendment of Part 31*, 83 FCC 2d 267 (1980) *recon.*, 87 FCC 2d 916 (1981), has recognized in this proceeding the state jurisdiction over expensing of station connections for state ratemaking purposes, has recognized divergent treatment of interest during construction and has not contested California's use of remaining life for approximately thirty years. Ohio argues that there is nothing to suggest that there needs to be national uniformity in depreciation procedures and that local diversity is desirable, noting that even a GTE of Ohio witness in an Ohio rate case has indicated that local diversity in setting depreciation rates is preferable.

11. Ohio contends that *McDonnell Douglas Corp. v. General Telephone Company of California*, 594 F.2d 720 (9th Cir. 1979), recognized the validity of intrastate regulatory jurisdiction under the Act by finding that Congress in enacting Section 2(b) had intended to give states considerable power with respect to wire communications that are wholly intrastate in nature.

12. California argues that the Commission's refusal to preempt state power to prescribe depreciation rates for intrastate ratemaking purposes will not undermine the Commission's procompetitive policies or signal a retreat since many states have adopted policies that foster competition. AT&T's assertion that preemption must be exercised to promote procompetitive policies is rejected by NARUC as unsupported. It states that expensing of station connection costs can have no competitive effect because expensing is not the same as unbundling. Moreover, it contends that the Commission did not adopt remaining life and equal life group depreciation procedures to promote competition but, rather, to more properly time capital recovery and insure that any deficiency in past depreciation was adjusted. Finally, NARUC states that the speculative statements about the numbers of states that are not following the Commission's policies are inadequate to justify preempting state commission jurisdiction on the theory that federal policies are being frustrated.

13. NARUC argues that the attempted distinction of Section 220(a) from Section 220(b) on the basis that Section 220(b) is mandatory while Section 220(a) is discretionary does not address the question of the preemptive effect of either section. It contends

that neither reason nor case law provides support for asserting that preemption of state regulation of intrastate communications is automatic with respect to subject areas which the FCC must regulate on the interstate level. It further notes that the language of Section 220(g) with respect to the effect of prescribed depreciation rates, accounts or records other than as prescribed by the Commission. NARUC states that the relationship between accounting and ratemaking is self evident and argues that state control over intrastate rates would have little vitality if state commissions were deprived of the power to disallow expenses and depreciation claimed by carriers. NARUC asserts that the fact that a proposed Section 220(j) that would have expressly reserved depreciation prescription powers to the states was not adopted does not mean that states must be bound by Commission depreciation prescriptions, stating that the final provision adopted was a compromise.

14. Consumers' Counsel supports the Commission's *Preemption Order* and generally cites from that *Order* in support of its position. Idaho also agrees with the conclusion of the Order and states that it believes that administrative costs of separate record keeping to meet state requirements will be small. Arkansas filed to indicate that its opinions had not rejected the new depreciation methods outright but had left the decision to individual cases for resolution.

15. AT&T's reply submits that the setting of depreciation rates does not constitute the exercise of jurisdiction with respect to charges for intrastate services. It argues that Section 2(b) does not deprive this Commission of jurisdiction over jointly used property where its regulation affects the conduct or development of interstate communications. AT&T states that if a state utilized the depreciation rate prescribed by the Commission, it may make adjustments to the test period data to reflect concepts of used and useful property or other pro forma adjustment to reflect conditions during the period during which the tariff will be in effect.

16. AT&T distinguishes *Houston East and West Texas Ry. Co. v. U.S., supra*, by asserting that that case involved actual preemption of service rates. It notes that while Congress may have sought to reverse that decision in the communications field, the issue here is only the jurisdiction to prescribe depreciation rates. Thus, it contends that the case actually suggests that Section 2(b) should be narrowly interpreted. Moreover, while use of federally prescribed depreciation rates may significantly affect intrastate rates, the states remain free to price individual service rates. See *e.g., NCUC I.*

17. USITA submits that federal preemption of jurisdiction over depreciation rate prescriptions for carriers for which the Commission has prescribed depreciation rates would not interfere with state commission ability to set intrastate service rates in accordance with any ratemaking method desired. It contends that the setting of depreciation rates is not a ratemaking function pursuant to Sections 201–205, but is the exercise of a specific power granted to the Commission by Congress. USITA argues that divergent depreciation rates create confusion and raise problems of capital recovery.

18. GTE contends that state action whether in the nature of ratemaking or otherwise which "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress" will be preempted. *Fidelity Federal Savings and Loan Association v. de la Cuesta*, 50 LW 4916, 4919 (1982). GTE concludes that the states do not have the power through the guise of ratemaking to negate FCC action designed to give effect to federal statutory objectives. GTE does not challenge state rights pursuant to state statutes to regulate rates for intrastate services. It asserts

that no preclusion of state ratemaking jurisdiction would result from FCC preemption under Section 220(b), although failure to preempt will endanger important national policies.

19. GTE submits that Section 220(b) charges the Commission with the responsibility of prescribing depreciation rates for carriers subject to the Act and recognizes only two exceptions. First, the Commission should act as soon as possible. Second, Section 220(h) recognizes that certain classes of carriers may be exempted. The Commission, according to GTE, has not exercised its authority pursuant to this provision in this proceeding. Finally, GTE argues that reliance on *NCUC I* and *NCUC II* as supporting a finding that the Commission cannot preempt state commission depreciation prescriptions for carriers subject to the Act is inconsistent with the holdings and analysis of those cases. AT&T and GTE submit that Section 221(b) is inapplicable because that provision was intended only to give states the jurisdiction to regulate local exchange service extending over a state boundary.

## Separate Statement of Commissioner Joseph R. Fogarty

## In Re: Reconsideration of Docket No. CC 79–105.

Having dissented from the Commission's original decision declining to preempt State accounting and depreciation rules inconsistent with those prescribed by the FCC,[1] I am pleased that the Commission has reconsidered this issue and acted to preempt such inconsistent State regulation.

As this *Order* establishes in detail, a true reading of the statutory language and legislative history of Section 220(b) of the Communications Act clearly demonstrates that Congress intended FCC depreciation rules and policies to control the field.

Even if preemption were not explicity mandated by Section 220(b), the effective implementation of our pro-competitive federal telecommunications policies dictates that inconsistent State depreciation regulation be preempted by this Commission. We cannot "defer to the States" on capital recovery issues. Telephone companies must be able to recover their cost of capital in a timely and effective manner if they are to price their services efficiently and to improve and expand their facilities to meet the challenges of competition and technologic innovation.

This preemption imperative is not merely theoretical. Too many States (e.g., Alabama, Louisiana, Nebraska, Ohio, New Jersey, Michigan, Arkansas) have already refused to recognize the critical necessity of the FCC's cost recovery principles. The resulting depreciation rate differentials are alarming: GTE of Ohio has indicated that it will be denied $7

[1] Amendment of Part 31, Joint Dissenting Statement of Commissioners Joseph R. Fogarty and Anne P. Jones, 89 FCC 2d 1109–1111 (1981).

million in capital recovery this year if the State of Ohio's disparate depreciation treatment is allowed to prevail.

The FCC cannot ignore the detrimental impacts of inconsistent State treatment of depreciation if our pro-competitive policies are to have any integrity and viability. This Commission now recognizes that preemption is both mandated as a matter of law and essential as a matter of policy, and our action today has my full endorsement and support.

Application for review
Frequency Assignment, Table of Assignments, FM
Minimum Mileage Separation
Rules, Waiver of, Denied

Application for review of staff's action returning application for Channel 266B, Adjuntas, Puerto Rico, denied. Applicant's proposal violated Section 73.203(b), availability of frequency assignments on the FM Table of Assignments, and Section 73.207, minimum mileage separation.
—*Anibal Sotomayor*

FCC 82–556

**BEFORE THE**

# FEDERAL COMMUNICATIONS COMMISSION

**WASHINGTON, D.C. 20554**

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| In re Application of | |
| ANIBAL SOTOMAYOR<br>Adjuntas, Puerto Rico | File No.<br>ARN–801003AQ |
| Req: 101.1 MHz, Channel 266B<br>21 kW, 1542 ft. | |
| For Construction Permit<br>For a New FM Service | |

MEMORANDUM OPINION AND ORDER

Adopted: December 8, 1982; Released: January 14, 1983

BY THE COMMISSION: COMMISSIONER JONES CONCURRING AND ISSUING A STATEMENT; COMMISSIONER SHARP CONCURRING IN THE RESULT.

1. The Commission has before it for consideration: (i) the above-captioned application; (ii) the action of the Broadcast Bureau of December 18, 1980, returning Anibal Sotomayor's (Sotomayor) application as unacceptable for filing; (iii) the Commission action by delegated authority of December 7, 1981 denying Sotomayor's petition for reconsideration; (iv)

an application for review, with a supplement thereto, filed by Sotomayor on December 24, 1981; (v) oppositions to the application for review filed by Ivanhoe Broadcasting Corporation, Marsona Broadcasting Corporation, and Zaba Radio Corporation; (vi) a request by Sotomayor for Commission action, filed February 5, 1982; (vii) a request by Sotomayor for stay of the Commission's order granting Family Broadcasting Group a permit to construct a station in Ponce, P.R, filed October 12, 1982, and (viii) related pleadings.

2. On June 5, 1978, Radio Stereo Ivanhoe filed a petition for rulemaking seeking to amend the FM Table of Assignments[1] to assign Channel 266B to Ponce, Puerto Rico (RM–3161). On April 2, 1980, Channel 266B was assigned to Ponce, and by October 3, 1980, five parties had applied to operate on the newly-assigned channel. Four parties specifed Ponce as their community of license. One party, Sotomayor, specified Adjuntas, Puerto Rico, citing Section 73.203(b) for authority. Section 73.203(b) states that an applicant for a Class B station may specify any other community located within 15 miles of the listed community, provided the adjacent community named is not itself listed in the Table of Assignments. Sotomayor's proposal did nt meet this last requirement; Adjuntas is listed in the Table and is assigned Channel 275. Consequently, Sotomayor sought a waiver of this provision arguing that although Channel 275 is listed in the Table as assigned to Adjuntas, it is actually being used by a station serving Camuy, Puerto Rico, and Adjuntas should not be considered a listed community.[2]

3. By letter dated December 18, 1980, the staff returned Sotomayor's application as unacceptable for filing because it named a listed community. The letter further stated, "Since a preliminary study disclosed the deficiency noted above, a detailed review was not made to determine if other problems exist which would also preclude acceptance of the application." *Letter to Anibal Sotomayor,* by the Chief, FM Branch, released December 18, 1980. In fact, another problem did exist. Sotomayor's proposed transmitter site would have been seven miles short-spaced with the site of WKSA-FM, Isabelle, Puerto Rico, but this was not known to the staff at the time.

4. Sotomayor filed a timely petition for reconsideration which was denied by the Chief, Broadcast Bureau in the Order designating the four other applications for Ponce, Puerto Rico, for hearing. *Ivanhoe Broadcasting Corporation,* 46 Fed. Reg. 59631, December 7, 1981. What followed was this application for review, and the oppositions filed by the

[1] Section 73.203(b) of the Commission's Rules.

[2] Channel 275 is being used in Camuy under the same authority by which Sotomayor seeks to use Channel 266, Section 73.203(b).

three parties listed in paragraph one above, all of whom are applicants for the Channel 266B assignment.

5. Sotomayor's arguments in his several pleadings can be briefly summarized as follows: Adjuntas' listing in the Table of Assignments does not reflect reality. Adjuntas' only channel was long ago removed to Camuy and there is no likelihood that it will ever return to Adjuntas. Adjuntas has no other opportunity to get its first local service; other frequencies are not available. Ponce, on the other hand, has eight commercial radio stations, a ninth station for Ponce is not as needed as a first station for Adjuntas. The Commission has often corrected the Table of Assignments in the past. It should take the opportunity to do so here. To fail to do so would be to "extol form over substance." None of the other applicants would be prejudiced, and the Commission would be afforded a wider choice of applicants and communities. As far as the problem of the short-spacing is concerned, Sotomayor alleges that the interference conditions between the proposed Adjuntas facility and WKSA-FM would be less severe than if there were two maximum service facilites spaced the proper distance apart.

6. The opposing parties' arguments are as follows: The Commission is not being "technical" with the applicant. The proper forum for Sotomayor to have achieved his aims was by rulemaking, and Sotomayor had such an opportunity in 1978. The only time the Commission has "corrected" the Table of Assignments has been in a rulemaking proceeding, never at the late date of actual processing. Sotomayor's late arrival gives rise to the suspicion that he did not believe a proposal seven miles short-spaced could prevail at rulemaking.[3] Acceptance of Sotomayor's proposal would indeed prejudice the Ponce applicants because of the probability that Sotomayor's specification of Adjuntas, a first local service, would give it an important Section 307(b) advantage over the rest of the applicants.[4] Hence, Sotomayor's late entry into the proceeding would not merely allow him to participate on an equal basis, but would virtually assure him award of the construction permit.

7. If one were to refer to the Commission's FM Table of Assignments, one could ascertain which cities have FM assignments, but not which cities have the stations themselves. That is because some assignments are being used in neighboring communities under the 15-mile rule, Section 73.203(b).[5] Section 73.203(b) was part of the original rulemaking which

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[3] The opposing parties point out that the city of Adjuntas itself is nine miles short-spaced with WKSA-FM's transmitter site, making it more improbable, in their view, that the Commission would have created an Adjuntas-Isabelle short-spacing at rulemaking.

[4] Section 307(b) of the Communications Act requires the Commission to assure a fair and equitable distribution of radio services among the several states and communities, and is the source for the strong preference first local service is given by the Commission.

[5] The rule is 10 miles in the case of a Class A station. The rule was 25 miles for all classes of stations before 1968. *Report and Order* in Docket No. 17969, 12 F.C.C. 2d 660, 12 R.R. 2d 1612 (1968).

initiated the FM Table of Assignment,[6] and it was meant to provide flexibility to the Table so that communities close to existing, unused assignments could apply for them without going through a rulemaking proceeding. However, because the rule was meant only for communities, existing or developing, whose needs were not addressed by the Table, communities which were specifically listed in the Table were excluded from using the provision.[7] Information provided by Ivanhoe Broadcasting Corporation, one of the applicants in this proceeding, reveals there are 131 instances where the Table has not been changed to reflect use of an FM channel in an unlisted community.

8. In 1968, the question was raised whether the Table should be reconstructed to avoid these inconsistencies, and a new rule was proposed that when an unlisted community received a new service, it would automatically become the listed community and the old community would be deleted from the Table. The proposal was rejected on the ground that it was important that the channel should revert to its originally assigned city if the facilities were never actually constructed or were subsequently deleted. *Report and Order* in Docket No. 17969, 12 F.C.C. 2d at 663. One of the principal reasons underlying the change in the 25-mile rule was the fact that in serving an unlisted community some transmitters had been constructed at such a great distance that listed communities received only a weak signal. By tightening the rule to 10 miles for Class A allocations and 15 miles for Class B, the Commission sought to assure that a signal of "high technical quality" would be placed over the listed community. *Report and Order* in Docket 17969, 12 F.C.C. 2d at 662. In addition, although not expressed in the 1968 rulemaking, there is another Commission concern and that is the potential for "leapfrogging." Let us assume that town A is the listed community and the channel is awarded to an applicant for unlisted community B, fifteen miles north of A. If town B then automatically becomes the listed community, town C, fifteen miles north if B, might ultimately become the licensed community if the licensee applied to move the station or if the facilities were deleted. In that event, the channel listed in town A would actually have been moved 30 miles away without benefit of rulemaking. Moreover, since a Class B facility with 50 kW at 500 feet HAAT can radiate its city-grade 70 dbu signal about 20 miles, the transmitter for a station in town C might be located as far as 50 miles from town A. Consequently, town A would not only fail to receive a signal of "high technical quality" but would be outside of the channel's service area (1.0 mV/m contour).

9. It is for these reasons that the Commission does not automatically change the Table when an award is made to an unlisted community.

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[6] *Third Report, Memorandum Opinion and Order* in Docket 14185, 23 R.R. 1859 (1963).

[7] *Report and Order* in Docket No. 17969, *supra* Note 4.

However, Sotomayor argues that we do change the Table quite regularly on a case-by-case basis, and should do so here. The only time, however, the Commission makes changes in the Table is in the context of a rulemaking proceeding, never at the time of proceesing. Sotomayor believes this argument to be an attempt at elevating form over substance. We firmly disagree. The proper approach to having a channel assigned to a community, whether a channel new to the area or removed from some other community, is by a rulemaking proceeding. In such a proceeding, "all facts, arguments or data to support the assignment can be submitted for Commission consideration." *Amite Broadcasting Service*, 16 R.R. 2d 1092 (1969). Had the question of service to Adjuntas been raised in the 1978 rulemaking proceeding, Sotomayor could have asked the Commission to do any one of three things. He could have asked that Channel 266 be assigned to Adjuntas instead of Ponce. Alternatively, he could have asked for the assignment of Channel 275 to be officially removed from Adjuntas, so he could become eligible to apply for the Ponce assignment. This procedure was followed recently in a case involving a Waterbury, Vermont applicant. The applicant successfully petitioned to have his community assignment deleted so that he could apply for an assignment in another community. *FM Channel Assignment* Docket No. 81–235, 46 Fed. Reg. 37900 (1981). Lastly, Sotomayor could have asked for a different channel for Adjuntas.[8]

10. However, Sotomayor did not participate in the rulemaking at all, and now considers any reproach for not participating as too technical a reading of the rules and too harsh a result for Adjuntas. Yet, the Commission has a valid interest in ensuring that, when a proceeding is instituted considering the assignment of a channel, all such effects that assignment would have on service to all other communities in the area be taken into account, and that the proceeding be thorough, fair and conclusive. Thus, it is not too harsh to require all affected parties to present their arguments at one time so that others may be put on notice of their interests, and so that the Commission may have the greatest flexibility in reaching a reaoned decision. That is why changes in the Table are not made at the time of processing.

11. Sotomayor relies heavily on his belief that equity is in his favor to merit special consideration even at this late date and cites Adjuntas' need for a first local service. First local service is a major concern of the Commission, but since we are without the flexibility of rulemaking in this circumstance, we are restricted to accepting or rejecting Sotomayor's proposal as is. When an applicant seeks a waiver of a rule, it must plead with particularity the facts and circumstances which warrant such action,

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[8] As part of Sotomayor's claim for relief, he stated that no other frequencies were available, but offered no study or other evidence that would support his conclusion.

and give affirmative reasons to justify the grant of the waiver in the public interest. *U.S. v. Storer Broadcasting Co.*, 351 U.S. 192 (1956). See *Coral Television Corp.*, 80 F.C.C. 2d 323 (1980) *reconsideration denied* 84 F.C.C. 2d 438 (1981), *affirmed per curiam* D.C. Cir. Case No. 81–1164, decided November 27, 1981. We do not find that Sotomayor has justified a waiver of Section 73.203(b), the availability of channels. Sotomayor did not show: (i) a proposal which is in compliance with the remainder of the Commission's Rules; (ii) good cause as to why he could not have participated in the rulemaking proceeding; (iii) an engineering study establishing that no other frequencies are avaiable to Adjuntas; and (iv) no prejudice to the applicants for Ponce. Sotomayor's proposal, as mentioned before, would be short-spaced with another station; elements (ii) and (iii) were left unaddressed by Sotomayor's proposal; and the applicants who did participate in the rulemaking proceeding, but who had no opportunity to comment on any proposal to assign the channel to Adjuntas, would be severely prejudiced by the late introduction of a Section 307(b) issue into what is, at present, a straight comparative hearing.

12. Nor has Sotomayer justified a waiver of Section 73.207, the minimum mileage separation rule. Since 1962, the nature and extent of interference protection accorded commercial FM broadcast stations have been determined solely by the mileage separation, power and antenna height limitation set forth in the Commission's Rules without regard to the concept of protected and interfering contours previously employed. *First Report and Order* in Docket 14185, 33 F.C.C. 309 (1962). Section 73.209(b). Therefore, arguments that seek to justify a waiver by showing there would be no actual interference are not persuasive. However, Sotomayor does not argue that there would be no interference, but that "interference conditions between the two facilities will be less severe than for two maximum service facilities spaced the specified 40 miles apart." In these circumstances, an evidentiary hearing on the request for waiver of Section 73.207 and Section 73.203(b) is not required. *U.S.* v. *Storer Broadcasting Company, supra.*

13. Accordingly, IT IS ORDERED, That the application for review filed by Anibal Sotomayor IS HEREBY DENIED. IT IS FURTHER ORDERED, That the requests for Commission action and stay of the Commission's order awarding a construction permit in the Ponce proceeding ARE DISMISSED AS MOOT in light of the action taken herein.

FEDERAL COMMUNICATION COMMISSION

William J. Tricarico *Secretary*

*December 10, 1982*

CONCURRING STATEMENT OF COMMISSIONER ANNE P. JONES

IN RE: APPLICATION FOR REVIEW OF THE ACTION OF THE BROADCAST BUREAU RETURNING AS UNACCEPTABLE FOR FILING THE APPLICATION OF ANIBAL SOTOMAYOR FOR CHANNEL 266B, ADJUNTAS, PUERTO RICO.

Were it not for the short-spacing problem which would result from licensing Channel 266B to Adjuntas, I would be very much inclined to dissent in this matter.

It seems to me Sotomayor is quite correct that it would exalt form over substance to exclude him from this comparative proceeding merely because Adjuntas, his community of license, is listed in the Table of Assignments as having Channel 175 assigned to it when that Channel is actually being used in a different community and there is no reason to believe it will ever become available to Adjuntas.

However, in view of the short-spacing problem, I concur in denial of Sotomayor's petition for review.

Interlocutory Ruling
Review Board, Review Function

Review Board dismissed as premature a request that it intervene in the interlocutory disposition of a matter pending before an Administrative Law Judge. No extraordinary circumstances were presented, and no reviewable action has yet occurred.

-*Arcatel, Inc.*
BC Docket No. 82–449

FCC 82R–74

**Before the**

## Federal Communications Commission

**Washington, D.C. 20554**

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| In re Application of | |
| ARCATEL, INC.<br>Lockhart, Texas | BC DOCKET NO. 82–449<br>File No. BPH–810204AE |
| LOCKHART OMNI COMMUNICATIONS, INC.<br>Lockhart, Texas | BC DOCKET NO. 82–451<br>File No. BPH–810611AD |
| CEN-TEX BROADCASTING CORPORATION<br>Lockhart, Texas | BC DOCKET NO. 82–452<br>File No. BPH–810814AD |
| CALDWELL BROADCASTING CORPORATION<br>Luling, Texas | BC DOCKET NO. 82–453<br>File No. BPH–810818AP |
| LATIN AMERICAN BROADCASTING CO.<br>Luling, Texas | BC DOCKET NO. 82–454<br>File No. BPH–810819AF |

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| NEW THINKING, INC.<br>Luling, Texas | BC DOCKET NO.<br>82–456<br>File No.<br>BPH–810819AP |
| TEXAS PROFESSIONAL COMMUNICATIONS, INC.<br>Lockhart, Texas | BC DOCKET NO.<br>82–457<br>File No.<br>BPH–810819AZ |
| LOCKHART RADIO, INC.<br>Lockhart, Texas | BC DOCKET NO.<br>82–458<br>File No.<br>BPH–810819BD |
| CENTRAL TEXAS FM BROADCASTING, INC.<br>Luling, Texas | BC DOCKET NO.<br>82–459<br>File No.<br>BPH–810819BN |
| For a Construction Permit for a New FM Station | |

MEMORANDUM OPINION AND ORDER

Adopted: December 8, 1982; Released: December 13, 1982

BY THE REVIEW BOARD:

1. The Review Board has under consideration a "Petition for Issuance of Declaratory Ruling" filed December 7, 1982 by Lockhart Omni Communications, Inc. (LOCI). As explained in paragaraph 2, *infra*, the procedural posture of this case warrants *ex parte* disposition of this petition without waiting for the filing of oppositions or replies. Section 1.45(e) of the Communication's Rules, 47 CFR §1.45(e).

2. Presently pending before the presiding Administrative Law Judge in this proceeding, Joseph Chachkin, are two proposed engineering amendments, filed by LOCI and Lockhart Radio, Inc., that are intended to meet designated air hazard issues. Hearing Designation Order, Mimeo No. 5298, released July 23, 1982, paras. 13, 16. The ALJ recently accepted a similar curative amendment filed by Arcatel, Inc., Order FCC 82M–3181,

Bd. 1968), may be interpreted as precluding acceptance of these later amendments, in alleged violation of the "consistent treatment" dictates of *Melody Music* v. *FCC*, 345 F.2d 730, 733 (D.C. Cir. 1965), and more recent relevant substantive law than *Outer Banks*, such as *Azalea Corp.*, 31 FCC 2d 561, 22 RR 2d 909 (1971). Without regard to the formal style of LOCI's pleading, petitioner is essentially requesting the Board to intervene in the interlocutory disposition of matters that are presently pending elsewhere. While our review function certainly encompasses the authority to overrule our own prior precedents if they are erroneous, *e.g.*, *Gilbert Goup, Inc.*, 49 RR 2d 957 (Rev. Bd), *rev'd on other grounds*, 49 RR 2d 1081 (1981), ours is indeed a "review" role, Sections 0.361(a) and 0.362(a) of the Rules, 47 CFR §§0.361(a) and 0.362(a), and we are loath to intervene in ongoing adjudicatory proceedings, except in the most extraordinary circumstances. *See Hanover Radio, Inc.*, 52 RR 2d 403 (Rev. Bd. 1982) (Board reverses ALJ order refusing to suspend procedural dates). No extraordinary circumstances are presented here and no reviewable action has yet occurred; hence, LOCI's petition will be dismissed as premature.

3. ACCORDINGLY, IT IS ORDERED, That the "Petition for Issuance of Declaratory Ruling" filed December 7, 1982 by Lockhart Omni Communications, Inc. IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Jerold L. Jacobs
Member, Review Board

Common Carrier, Rates, Charges
Tariff, Revision of

Proposed tariff revisions to increase rates for supplemental functions and miscellaneous items granted. Proposed revisions denied to 19 BSOC tariffs because of non-compliance with settlement agreement in Docket No. 20099.
*-AT&T Co.*

FCC 82–517

**BEFORE THE**

# FEDERAL COMMUNICATIONS COMMISSION

**WASHINGTON, D.C. 20554**

| In the Matter of | |
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| THE AMERICAN TELEPHONE AND TELEGRAPH COMPANY<br>Revisions to Tariffs F.C.C. Nos. 265, 266 and 268<br>Facilities for Other Common Carriers | Transmittal No. 14071 |
| THE BELL TELEPHONE COMPANY OF PENNSYLVANIA<br>Revisions to Tariff F.C.C. No. 38, Facilities for Other Common Carriers | Transmittal No. 658 |
| THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANIES<br>Revisions to Tariff F.C.C. No. 2, Facilities for Other Common Carriers | Transmittal No. 83 |
| CINCINNATI BELL INC.<br>Revisions to Tariff F.C.C. No. 34, Facilities for Other Common Carriers | Transmittal No. 310 |
| ILLINOIS BELL TELEPHONE COMPANY<br>Revisions to Tariff F.C.C. No. 33, Facilities for Other Common Carriers | Transmittal No. 672 |

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| INDIANA BELL TELEPHONE COMPANY<br>Revisions to Tariff F.C.C. No. 33, Facilities for Other Common Carriers | Transmittal No. 674 |
| MICHIGAN BELL TELEPHONE COMPANY<br>Revisions to Tariff F.C.C. No. 37, Facilities for Other Common Carriers | Transmittal No. 441 |
| THE MOUNTAIN STATES BELL TELEPHONE TELEGRAPH COMPANY<br>Revisions to Tariff F.C.C. No. 59 Facilities for Other Common Carriers | Transmittal No. 620 |
| NEW ENGLAND TELEPHONE AND TELEGRAPH COMPANY<br>Revisions to Tariff F.C.C. No. 39, Facilities for Other Common Carriers | Transmittal No. 650 |
| NEW JERSEY BELL TELEPHONE COMPANY<br>Revisions to Tariff F.C.C. No. 33, Facilities for Other Common Carriers | Transmittal No. 362 |
| NEW YORK TELEPHONE COMPANY<br>Revisions to Tariff F.C.C. No 39, Facilities for Other Common Carriers | Transmittal No. 582 |
| NORTHWESTERN BELL TELEPHONE COMPANY<br>Revisions to Tariff F.C.C. No. 45, Facilities for Other Common Carriers | Transmittal No. 893 |
| THE OHIO BELL TELEPHONE COMPANY<br>Revisions to Tariff F.C.C. No. 37, Facilities for Other Common Carriers | Transmittal No. 603 |
| PACIFIC NORTHWEST BELL TELEPHONE COMPANY<br>Revisions to Tariff F.C.C. No. 4, Facilities for Other Common Carriers | Transmittal No. 53 |
| THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY<br>Revisions to Tariff F.C.C. No. 126, Facilities for Other Common Carriers | Transmittal No. 971 |

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| SOUTH CENTRAL BELL TELEPHONE COMPANY<br>Revisions to Tariff F.C.C. No. 3, Facilities for Other Common Carriers | Transmittal No. 70 |
| SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY<br>Revisions to Tariff F.C.C. No. 55, Facilities for Other Common Carriers | Transmittal No. 1223 |
| SOUTHERN NEW ENGLAND TELEPHONE COMPANY<br>Revisions to Tariff F.C.C. No. 33, Facilities for Other Common Carriers | Transmittal No. 257 |
| SOUTHWESTERN BELL TELEPHONE COMPANY<br>Revisions to Tariff F.C.C. No. 65, Facilities for Other Common Carriers | Transmittal No. 1187 |
| WISCONSIN TELEPHONE COMPANY<br>Revisions to Tariff F.C.C. No. 35, Facilities for Other Common Carriers | Transmittal No. 483 |

## MEMORANDUM OPINION AND ORDER

Adopted November 18, 1982; Released: November 26, 1982

BY THE COMMISSION: COMMISSIONER QUELLO CONCURRING IN THE RESULT; COMMISSIONER FOGARTY DISSENTING.

1. Before the Commission are interrelated proposed tariff revisions by the 19 Bell System Operating Companies (BSOCs) and the American Telephone and Telegraph Company (AT&T or Bell) scheduled to become effective November 20, 1982. The BSOC filings would increase rates for certain facilities furnished to other common carriers (OCCs). AT&T has concurrently filed revisions which would increase rates for supplemental functions and miscellaneous items contained in Tariffs F.C.C. Nos. 265,

266 and 268.[1] For reasons to be explained, we are rejecting the revisions to the 19 BSOC tariffs because they do not comply with the Settlement Agreement in Docket No. 20099,[2] but we are allowing the revisions to Tariffs 265, 266 and 268 to become effective.[3]

## *BACKGROUND AND CONTENTIONS*

2. The Bell System provides many intracity and intercity channels to both OCCs and other customers for use in their interstate private line networks. These channels are currently offered under different tariffs depending on the identity of the customer and the location of the channel. Thus, private line channels that are both physically and jurisdictionally interstate are obtained by OCCs under AT&T Tariff F.C.C. No. 266. On the other hand, the OCC channels which are jurisdictionally interstate, but physically intrastate are covered by the 19 BSOC tariffs.[4] OCCs use the intracity channels offered by Bell as local distribution facilities to interconnect customer premises with the OCCs' long haul or intercity transmission lines. These channels are also used to interconnect OCC operating centers in a given rate center or exchange area with BSOC operating centers or central offices for purposes of gaining access to exchange message service functions.[5] Intercity channels are generally used by OCCs to augment their own intercity transmission facilities or to extend to points where they have no transmission facilities of their own. In the case of pure resellers, intercity channels obtained either from AT&T or other underlying carriers, together with any requisite intracity channels, form the sole basis for such carriers' offerings.

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[1] Tariff F.C.C. No. 265 offers entrance facilities to domestic satellite common carriers. Tariff F.C.C. No. 266 offers physically interstate facilities to OCCs, while Tariff F.C.C. No. 268 offers physically interstate digital facilities to OCCs.

[2] American Telephone and Telegraph Company, Offer of Facilities for Use by Other Common Carriers, Docket No. 20099, Memorandum Opinion and Order, 47 FCC 2d 660 (1974) (Hearing Order), Memorandum Opinion and Order, 52 FCC 2d 727 (1975).

[3] A petition seeking rejection of the proposed revisions has been filed by Satellite Business Systems and a petition to suspend has been filed by American Satellite Company. Petitions for rejection, or in the alternative suspension, have been filed by Southern Pacific Communications Company, MCI Telecommunications Corporation (MCI), U.S. Telephone Communications, Inc., U.S. Telephone and Telegraph Corporation, TRT Telecommunications Corporation, RCA Global Communications, Inc., Western Union International Inc., Business Telecommunications Corporation, the Western Union Telegraph Company (Western Union) and Midwestern Relay Company. The National Association of Regulatory Utility Commissioners has filed comments on these filings, and AT&T has replied. Four pleadings not authorized by our rules (47 CFR §1.773) have also been submitted: a response to AT&T's reply by MCI and Western Union, and separate replies to those responses by AT&T. These pleadings have not been considered because insufficient justification was provided for their acceptace.

[4] AT&T Tariff F.C.C. No. 260 covers non-OCC channels that are physically intrastate and jurisdictionally interstate, as well as those that are both physically and jurisdictionally interstate.

[5] For example, Exchange Network Facilities for Interstate Access (ENFIA) or private line services such as foreign exchange (FX) and Common Control Switching Arrangements (CCSA).

3. The question of what rates OCCs should pay for Bell facilities took on major importance in 1974 when the Commission released its decision in Docket No. 19896.[6] That decision required Bell to establish physical connections with the OCCs, and to file tariffs applicable to such interconnections with this Commission rather than with the states. AT&T had previously filed tariffs relating to OCC interconnection facilities with state regulatory commissions, although tariffs respecting such interconnection had also been filed with this Commission under protest.[7] In purported compliance with the Docket No. 19896 decision, Bell subsequently filed two new tariffs, along with supplements and revisions to all of its earlier filed tariffs offering facilities to OCCs. However, the Commission questioned numerous aspects of these filings and, in Docket No. 20099, instituted an investigation into all of the BSOC tariffs offering facilities for use by OCCs. This investigation was to consider in detail numerous issues relating to the construction and application of the OCC tariffs, the rates and charges for the facilities offered under those tariffs and restrictions on the use of those facilities. The Commission also designated for investigation certain broad legal issues, including whether the OCC tariffs would result in unjust and unreasonable discrimination within the meaning of Section 202(a) of the Communications Act.[8]

4. Before formal proceedings were to begin Docket No. 20099, however, Bell and the OCCs entered into negotiations looking toward settlement of the issues involved. Ultimately, Bell agreed, among other things, to remove many of the tariff restrictions and to establish rates for physically intrastate OCC facilities that would be identical to state private line rates on August 2, 1974, less agreed upon discounts.[9] The Commission accept-

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[6] Bell System Tariff Offerings of Local Distribution Facilities, Docket No. 19896, Decision, 46 FCC 2d 413 (1974), *aff'd sub nom.*, Bell Telephone Co. of Pennsylvania v. FCC, 503 F. 2d 1250 (3rd Cir. 1974), *cert. denied*, 422 U.S. 1026 (1975).

[7] *Id.* at 416. Bell contended that its interconnection facilities were entirely intrastate, that the offerings were of a local nature, and that, consequently, the activities involved in the Docket No. 19896 proceeding were local and subject to state and local regulation exclusively.

[8] 47 FCC 2d at 664, 665.

[9] The Settlement Agreement provided for the establishment of a 30 percent discount for intracity voice grade and wire pair facilities and a 21 percent discount for intercity voice grade facilities within a single state and wholly within an area comprising all those exchanges whose rate centers are 40 miles or less from the rate center applicable to the OCC terminal location. *See*, AT&T Offer of Facilities for Use by Other Common Carriers, 52 FCC 2d 727 (1975). In the course of the Docket No. 20099 negotiations leading to the Settlement Agreement, an issue was raised regarding price disparities for physically intrastate channels under FCC jurisdiction, depending upon whether an end-to-end private line arrangement was provided wholly by Bell or partly by Bell and partly through customer or OCC-provided arrangements. To resolve this issue, the Commission instituted Docket No. 20453, which was subsequently mooted by Bell's voluntary action. Specifically, Bell filed tariff revisions which provide that Tariff 260 is applicable to "services between points within the boundaries of a state which services are furnished to a customer for communicating with points outside the state when connected by means of Telephone Company arrangements with services furnished by the Telephone Company for through communications services" or "with facilities of Other Participating Carriers." *See*, 52 FCC 2d at 735, 736.

ed, but did not necessarily approve, the settlement "as a disposition, without prejudice, of Docket No. 20099."[10] It took this action in the belief that the settlement afforded "an expeditious and acceptable compromise of differences on matters which would otherwise necessitate substantial time, expense and effort to resolve through formal Commission processes."[11] The agreed upon settlement rates, which had been incorporated into the 19 BSOC tariffs, were made effective retroactively to December 1, 1974.[12] Because these rates were equivalent to state private line rates, less discounts, they differed from state to state. The Commission accepted those settlement rates with the understanding that they would be effective only for an interim period, and that during such period AT&T would develop, "new OCC tariffs containing new rate schedules supported as required by Part 61 of the Commission Rules."[13] In addition, by the terms of the Settlement Agreement, these new tariffs were not to become effective until six months from the date of their filing.[14]

5. Since that time, AT&T has attempted to increase the rates for OCC facilities on several occasions. On December 1, 1978, BSOC Tariff F.C.C. No. 6 was filed as a proposed replacement for the settlement rates. Among other things, BSOC 6 would have consolidated the multitude of state rates into a single, integrated rate structure, which was independently supported by economic data. Before this tariff was scheduled to become effective, however, the Commission instituted its Docket No. 79–246 proceeding to examine problems of inconsistency and lack of rate structure uniformity in Bell's private line services.[15] In the Notice of Proposed Rulemaking in that proceeding, we observed that the BSOC 6 filing eptiomized many of the problems outlined relative to Bell's private line rate structures in general, and that substantial revisions to the tariff would need to be made before it could be permitted to become effective.[16] AT&T subsequently withdrew the filing.

6. In the wake of Commission actions in 1980 and 1981 increasing its authorized rate of return for interstate operations, AT&T filed across-the-board general rate increases for its tariffed services, including OCC channels subject to the Settlement Agreement. Although the Commission allowed the 1980 increases to become effective, the United States Court of Appeals later found that these rate increases did not comply with the terms of the Settlement Agreement in Docket No. 20099. *MCI*

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[10] 52 FCC 2d at 732.

[11] *Id.*

[12] *Id.* at 734, 739.

[13] *Id.* at 734.

[14] *Id.* at 734, 740.

[15] American Telephone and Telegraph Company, Private Line Rate Structure and Volume Discount Practices, Docket No. 79–246, Notice of Inquiry and Proposed Rulemaking, 74 FCC 2d 226 (1979).

[16] *Id.* at 255.

*Telecommunications Corp. v. FCC*, 665 F. 2d 1300 (D.C. Cir. 1981). AT&T, in turn, rescinded all of these rate increases, and made refunds to the OCCs. Consequently, the original settlement rates remain in effect at the present time.[17]

7. Before describing in some detail the methodology employed by Bell to support this filing, it is important to place the documentation in a proper perspective. As stated in paragraph 4 above, under the Settlement Agreement accepted but not approved by the Commission in 1975, AT&T was permitted, as a means to temporarily resolve a compensation controversy, to transfer the existing rates and rate structures from individual state tariffs into the OCC facilities tariffs. Bell has retained these negotiated settlement rate levels and rate structures as a foundation for its proposal and built upon them.[18] Thus, it has derived the proposed rates by increasing the individual rate elements by a certain percentage for each state. The costing methodology employed in the filing, therefore, does no more than determine the aggregate revenue requirements for each of Bell's 52 jurisdictional study areas in order to arrive at the percentage markup factor. As such, AT&T's methodology does not purport to cost-justify the settlement rate levels and rate structures on which the filing is built.

8. Specifically, to develop the markup percentages, AT&T allocated a portion of projected 1982 costs for the total private line category to OCC facilities by jurisdictional study area. This was done by using jurisdictional cost data, special studies, and various cost factors to develop distributive ratios applicable to the facilities used by OCCs. The ratios were applied to total 1982 projected private line purportedly to determine Bell's costs related to OCC facilities, given current rate levels. To obtain the proposed rate levels, AT&T followed a procedure whereby it assumed a five percent reduction in usuage of OCC facilities, excluding ENFIA Rate Element 1, and thus reduced costs accordingly. Next, 1982 projected OCC revenues were increased to reflect the elimination of current discounts. An iterative process was then employed to arrive at the percentage increase above these adjusted revenues in each study area required to earn at a 12.75 percent rate of return. AT&T applied these overall percentages to each element of the tariff in a particular study area in order to increase rates sufficiently to cover revenue requirements. These percent-

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[17] American Telephone and Telegraph Company, Offer of Facilities for Other Common Carriers, Memorandum Opinion and Order, 89 FCC 2d 389 (1982) (Refund Order), *appeal pending sub. nom.*, RCA Global Communications, Inc. v. FCC, Case No. 82–1550 (D.C. Cir. 1982).

[18] The term rate structure comprehends the way in which services are priced, including the number and denomination of rate elements and the pricing techniques used to price each element. Although the term rate structure does not include the actual rate levels, it does comprehend the relationships which exist between and among the various rate levels. Since Bell built upon both the existing rate structures and rate levels, the revised rate schedules which Bell has filed reflect rate elements, pricing techniques, and rate relationships which derive from the agreement.

age markups range from a low of 3.4 percent for Bell of Pennsylvania to a high of 440.3 percent of Pacific Northwest Bell. AT&T's analysis showed at $130 million revenue requirements deficiency at the current settlement rates. As a separate matter, rates for supplemental functions and miscellaneous items contained in the interstate BSOC tariffs and in AT&T Tariffs F.C.C. Nos. 265, 266 and 268 would also be increased.[1920]

9. Petitioners raise essentially two major objections to these latest OCC facilities filings. As an initial matter, they say that Bell has violated the Settlement Agreement by failing to file "new" rate structures or rate levels supported by cost data required by Section 61.38 of the Commission's Rules. On this point, petitioners particularly criticize Bell's use of the settlement rates based on 1974 state private line rates. Petitioners additionally complain that Bell offers the same private line channels to the general public at substantially lower rates than it proposes to charge the OCCs, thereby resulting in unreasonable discrimination in the provision of "like" communication services proscribed by Section 202(a) of the Communications Act. These rate inconsistencies are further said to demonstrate that the rates for OCC facilities lack any basis in costs.

10. AT&T disputes both contentions. It maintains that the starting point for its cost studies was not the 1974 state private line rates, but rather 1982 projected Private Line Category results contained in its Tariff Filing Reference Package. According to Bell, it then performed separate cost studies for each jurisdictional area to disaggregate OCC facilities costs from the Private Line Category. From these separate cost studies, Bell claims to have arrived at the BSOC's costs, which in turn became the BSOC's revenue requirements for providing OCC facilities. Thus, says Bell, the 1974 rate levels were used only to identify the amount of revenue shortfall in the BSOCs and not to develop the BSOC's costs in providing OCC facilities. In response to petitioners' claims of unreasonable discrimination, AT&T asserts that the "services" provided to the general public under Tariff 260 are not "like" the "facilities" offered the OCCs under the BSOC tariffs.[21] And even if they are assumed to be "like," AT&T argues

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[19] In its support materials, AT&T lists functions such as signaling conversion, two-wire to four-wire conversion and echo suppression as examples of supplement functions. Miscellaneous items include, for example, additional engineering or labor, maintenance of facilities and receipt of trouble reports. See Volume 1, page 1–21, Description and Justification.

[20] Because the rates in the 19 BSOC tariffs are cross-referenced by other BSOC tariffs, the proposed tariff revisions would increase rates paid by OCC customers for certain othe facilities. These other tariffs include BSOC Tariff F.C.C. No. 3, providing intracity service for customer access to an OCC at the customer's expense; BSOC Tariff F.C.C. No. 4, providing overseas connectng facilities for OCCs; and BSOC Tariffs F.C.C. Nos. 8 and 9. This filing would increase Rate Element 1 of these two ENFIA tariffs, which covers the central office connecting facility between an OCC's terminal location and a telephone company central office.

[21] For example, says AT&T, an OCC may specify under the facilities tariffs how it controls echo and assigns loss, and has control over certain electrical characteristics of its facility, while the general public has none of these options. In addition, AT&T lists certain functional differences between OCC facilities and private line services available to the general public, such as how complaints are handled and trouble reported.

that differences in their underlying costs justify any rate variations between the two services. In any event, if the Commission desires, AT&T offers to "cap" the rates for OCC facilities at comparable rates charged the general public. This would be accomplished by filing tariff revisions subsequent to the effective date of the current filing, without providing additional economic support for such revisions. Specifically, it proposes that in the event the monthly charge for a physically intrastate intercity facility exceeds the comparable rate in Tariff 260, the lower rate would apply.[22]

## *DISCUSSION*

11. As explained, the proposed tariff revisions now before us purport to satisfy AT&T's contractual obligations to the OCCs under the Settlement Agreement which this Commission accepted in 1975. In such circumstances, we have a duty to ensure that these tariff filings do not unilaterally abrogate a lawful private contract between carriers, by altering its terms. *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348, (1956) and *United Gas Pipeline Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956). Where this doctrine is violated, rejected is required. *MCI Telecommunications Corp. v. FCC*, 665 F.2d 1300 (D.C. Cir. 1981).

12. In resolving this issue, we must first look to the language of the agreement itself. According to its terms, the settlement rates were to be replaced by "new OCC tariffs to be developed by the Bell System companies."[23] And, in accepting the Settlement Agreement, we expressed our understanding of Bell's obligation to be that "during the Interim Period, new OCC tariffs containing new rate schedules supported as required by Part 61 of the Commission's Rules will be developed."[24] Thus, both the Settlement Agreement and the Order accepting it embody the expectation of Bell and the OCCs that "new" OCC facilities tariffs would be developed during the interim period. We think that "new" means something more than marking up existing rates.

13. The circumstances surrounding the negotiation and acceptance of the Settlement Agreement support this interpretation. From the time the Commission first considered requiring Bell to provide interconnection facilities to the OCCs, there has been controversy concerning the proper set of interstate tariffs under which OCCs should be offered these facilities. This controversy precipitated the investigation in Docket No. 20099.

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[22] Bell's reply at page 35.

[23] 52 FCC 2d at 740.

[24] *Id.* at 734. *See also*, footnote 2 at 738. A "rate schedule" comprehends the rate levels and the details of the way in which rates are expressed and the rate elements defined; i.e. the rate structure. *See, e.g.* Thill Securities Corp. v. New York Stock Exchange, 473 F. Supp. 1369 (E.D. Wisc. 1979), *affirmed*, 633 F.2d 65 (7th Cir. 1980), *cert. denied*, 450 U.S. 998 (1980); American Trucking Associations, Inc. v. U.S., 344 U.S. 298, 310 (1953).

In the Order setting these tariffs for investigation, the Commission proposed to address all aspects of the tariffs, including rate structures.[25] Under the compromise agreement, however, the OCCs would take facilities at rates were derived from state tariffs, less agreed upon discounts. Significantly, at the time we accepted the use of these state rates and allowed them to be filed with the Commission in the 19 BSOC tariffs, AT&T's general customer tariffs were replete with bundled service offerings and contained many restrictions on use of service, resale and interconnection which made them unsuitable for the provision of service to OCCs. Under these circumstances, the use of separate tariff for OCCs made good sense, because it would not have been viable for the OCCs to obtain service under the general tariffs without substantial modification.[26] Nonetheless, although we accepted the Settlement Agreement, we did not view it as a final resolution of the controversy over appropriate rates and rate structures for the provision of service to OCCs.[27] On the contrary, we regarded it merely as an expeditious way to provide the OCCs with service on an interim basis, given AT&T's failure to date to file a justified rate scheme. During the time these settlement rates were to be in effect, we anticipated that Bell would independently develop fully supported tariff schedules to replace the settlement rates. While we allowed those settlement rates to govern the provision of service during that interim period, we in no way endorsed either the settlement rates or the concept of different rate schedules for OCCs and other customers for use in future tariff filings.

14. Against this background, we conclude that Bell has not met its responsibilities under the Settlement Agreement, and that rejection is required. Although Bell has described its ratemaking methodology in detail, the problem we have with its approach is that it has merely filed the 1975 settlement rates, marked up to cover its claimed revenue requirements. Stated another way, Bell has retained the settlement rate

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[25] 47 FCC 2d at 662.

[26] We note, however, that the federal tariff and regulatory environment has substantially changed since that time as a result of the Commission's decision in Docket No. 20097, (Resale and Shared Use of Common Carrier Services and Facilities, Report and Order, 60 FCC 2d 261 (1976), *recon.*, 62 FCC 2d 588 (1977), *aff'd sub nom.*, AT&T v. FCC, 572 F. 2d 17 (2d Cir. 1978), *cert. denied*, 439 U.S. 875 (1978)), its "Piece-Out" decision (AT&T, Restrictions on Interconnection of Private Line Services, 60 FCC 2d 939 (1976)), the so-called Execunet decisions, (MCI Telecommunications Corp. v. FCC (Execunet I), 561 F.2d 365 (1977), *cert. denied*, 434 U.S. 1040 (1978), and MCI Telecommunications Corp. v. FCC (Execunet II), 580 F.2d 590 (1978), *cert. denied*, 439 U.S. 980 (1978)), and others involving Commission jurisdiction over physically intrastate services (*see, e.g.* People of the State of California v. FCC, 567 F.2d 82 (D.C. Cir. 1976); New York Telephone Company v. FCC, 631 F.2d 1059 (2nd Cir. 1980)).

[27] In the Order accepting the Settlement Agreement, we emphasized that our action was not to be interpreted as "modifying or derogating in any way the obligations imposed upon AT&T and the Associated Bell System Companies by earlier Decisions, including our Decision in Docket No. 19896." *See*, AT&T Offer of Facilities for Use by Other Common Carriers, *supra*, 52 FCC 2d at 733.

structure — which was intended to serve only as a negotiated, interim measure — and, without independent justification, used it as a foundation for the carrier-initiated schedules it was required to develop for the OCCs. As we interpret it, the Settlement Agreement plainly required something more. Specifically, it required AT&T to file rate schedules which are independently supported and thus do not presume the reasonableness of the settlement rates and rate structures. Rather than simply build upon rates and rate structures adopted from state tariffs, it was incumbent upon AT&T to provide support for its selection of rate elements in pricing techniques.[28] This is the clear implication of the parties' reference to "new" rate schedules in defining Bell's obligations under the Settlement Agreement. In viewing the settlement as a temporary expedient to ensure the smooth provision of service while Bell developed new interstate tariffs, it becomes extremely difficult to credit AT&T's position that it may legitimately perpetuate the state rate relationships and other settlement terms without first having independently supported them.

15. Our decision to reject the revisions to the 19 BSOC tariffs is based solely on the grounds that it is consistent with the terms of the Settlement Agreement. Thus, we need not rule on petitioners' argument that the tariff revisions are unreasonably discriminatory under Section 202(a) of the Communications Act. However, we note that apart from retaining unjustified rate structures, the proposed tariff revisions would also retain the practice initiated in the Settlement Agreement of separately classifying and pricing many of the Bell private line channels leased by the OCCs. The result is that, in many cases, OCCs would pay different charges for comparable transmission channels than non-OCC customers who take service under AT&T's general tariff offerings in Tariff 260. The underlying presumption by AT&T seems to be that since such a dichotomy was a by-product of the settlement, it is already "justified." This presumption is unfounded, however. As stated, the Commission's acceptance of such a rate scheme was limited to the unique circumstances obtaining at the time of the settlement. It did not, and indeed could not, approve the settlement rate structure as a basis for ratemaking in the future. Thus, it would have been entirely inappropriate in view of the requirements of Section 202(a), n. 33 infra, for us to have given our imprimatur to a filing which had a different rate structure and rate levels than those already on file for comparable channels. To illustrate how this dichotomy would be carried forward in the current tariff filings, interexchange channels for OCCs would be priced differently depending on whether they extend between points within a single state or between points in different states.

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[28] Pricing techniques are extremely important because they are determinative of the ways in which costs are aggregated and assigned. Thus, pricing techniques can be used to engage in price discrimination. *See, e.g.* AT&T Private Line Rate Structure, *supra*, at 237–245.

In the former case, the proposed rates would continue to be based upon rate structures derived from the state tariffs; in the latter, rates would be precisely the same, via cross-reference in Tariff 266, as the equivalent rates for channels provided the general public under Tariff 260. Yet, where non-OCCs are concerned, these Tariff 260 interexchange channel rates apply to all channels, whether within a single state or not. No justification or substantial argument is made by Bell to support this very significant difference in rate treatment. Instead, Bell has simply said that the rate differences result because the physically intrastate OCC channels are deaveraged on a geographical basis, whereas the Tariff 260 rates are based on a nationwide averaging scheme.[29] This difference, however, is purely a product of the Settlement Agreement, but has never been independently justified. As noted, in response to criticism, Bell has offered to cap the disparate OCC rates so that they would not exceed the Tariff 260 rates, although in certain cases they would be lower. This attempt at achieving rate parity, however, raises the question of why the rates and rate structures are different in the first place.[30] No meaningful information has been provided to demonstrate that the transmission channels offered under Tariff 260 differ in any significant functional respect from those offered under the OCC tariffs.[31][32]

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[29] Bell's reply at 31.

[30] Such a practice would raise serious questions under those portions of Section 202(a) forbidding unreasonable preferences or prejudices since OCCs would always be entitled to the lower of the two rates. Yet customers under Tariff 260 who are not carriers would never be able to benefit from the OCC rates because the latter are available only to carriers.

[31] AT&T has made no substantial argument that separate rate treatment for OCCs is reasonable. That the private line service obtained under Tariff 260 can serve the OCC requirements is not contested. The only difference between the Tariff 260 and OCC offerings relates to pricing and the number in which certain features associated with such channels (for example, engineering assistance) are expressed and bundled in the tariffs in accordance with the Settlement Agreement. Rather than show any functional differences between the channels themselves, AT&T has merely explained that Tariff 260 offers "services" and the OCC tariffs offer "facilities." This is nothing more than a nominal distinction, since under AT&T's tariff scheme, the same channel may be classified either as a service or a facility solely on the basis of how it used in a given network. Thus, if an OCC were to use a Multischedule Private Line (MPL) channel from Tariff 260, for example, to join two of its own channels, then the MPL channel should, according to AT&T's logic, be called a facility rather than a service; nonetheless, the same channel offering, when used by a non-OCC customer, would be considered a service.

[32] In Volume 1, p. 4–3 of the cost support material accompanying the 1978 BSOC 6 filing, AT&T stated that as a result of the Commission's Resale and Shared Use and "Piecè-Out" decisions, *supra*, OCCs could obtain ". . . private line services under Bell service tariffs or facilities under Bell facilities tariffs. The result is that OCCs have the opportunity to choose the lower rate. . . if there is a difference in price between the two: . . From the OCC patron's point of view, the result [would not be] significantly different in either case. But from the OCC's point of view the rate impact could be significant if these facility and service rates were different." This demonstrates clearly that Bell itself recognized that channels provided under the OCC facilities and general private line service tariffs were interchangeable, and that it was only the tariff restrictions in existance at the time of the Settlement Agreement which prevented OCCs from taking advantage of any lower rates found in AT&T's general offering, Tariff 260. *Accord, Ad Hoc Telecommunications Users Committee v. FCC 680 F. 2d 790, (D.C. Cir. 1982): "If customers perceive that two services perform the same function, price will govern choice."*

16. As a consequence of AT&T's failure to submit an acceptable tariff filing, the 1975 settlement rates have remained in effect far longer than either the parties or the Commission could have envisioned. Yet the task of developing suitable replacement rates would appear to be well within AT&T's capabilities. Clearly, AT&T could meet its obligations under both the Settlement Agreement and the Communications Act by filing consolidated rate schedules applicable to both OCCs and non-OCC customers. The job of supporting such a filing would be made considerably easier than where separate rate schedules are maintained. In the event, however, that AT&T were to file a different schedule for OCCs, it would have to show significant functional differences in the services, and that these differences justified a separate classification and disparate rate treatment under Sections 201(b) and 202(a) of the Act.[33] While do not rule out the possibility that AT&T could justify rates patterned after the settlement rates, it has made no showing in this filing to indicate that these rates are reasonable. It has merely adopted the settlement rates, without providing any independent basis for this ratemaking approach such as we would normally expect. The reliance in the filings before us on the settlement rate schedules would simply perpetuate rate disparities and rate relationships derived from state tariffs which have never been independently justified before this Commission.

17. Accordingly, IT IS ORDERED that the tariff material originally submitted under the Bell System Operating Companies' transmittals referenced in the caption to this Memorandum Opinion and Order is rejected.[34]

18. IT IS FURTHER ORDERED that the petitions to reject or suspend ARE GRANTED to the extent indicated above, and are otherwise DENIED.

19. IT IS FURTHER ORDERED that Sections 61.58 and 61.59 of the Commission's Rules, 47 C.F.R. 61.58 and 61.59, are waived for the purpose of allowing changes to existing BSOC tariffs necessary to continue currently effective and/or pending rates and regulations.

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[33] Section 201(b) of the Communications Act requires that all charges, practices, classifications and regulations for a communication service be just and reasonable. Section 202(a) of the Act proscribes unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communications service.

[34] As to the supplemental and miscellaneous functions in AT&T Tariffs F.C.C. Nos. 265, 266 and 268, petitioners have raised a number of concerns regarding the manner in which costs have been developed and the possibility of discrimination vis-a-vis the general public. Petitioners have not, however, alleged that these AT&T tariffs violate the Settlement Agreement on their face. We see no purpose in separately investigating these tariffs since it is only the supplemental functions, of relatively minor importance compared to total OCC revenue, which differ from the general public rates. At such time, however, as AT&T seeks to file a new tariff to satisfy its commitment under the agreement, we will expect it to justify the way in which it has disaggregated these supplemental functions from the transmission channel services, and demonstrate that this does not result in unreasonable discrimination.

20. IT IS FURTHER ORDERED, that this Memorandum Opinion and Order is effective upon adoption.

FEDERAL COMMUNICATIONS COMMISSION

William J. Tricarico *Secretary*

Interference, Corrective Measures
Interference, Objectionable

Where operation of new TV station at 50% of authorized power causes objectionable interference to land mobile radio facilities, petition for reconsideration of Commission action denying application to operate at that power for six months denied. Financial responsibility for eliminating objectionable interference falls upon the TV station, which is the "newcomer."
- *Broadcast Corp. of Georgia*

FCC 82–571

**Before the**

# FEDERAL COMMUNICATIONS COMMISSION

**Washington, D.C. 20554**

In the Matter of

BROADCAST CORPORATION OF GEORGIA
(WVEU(TV))
Atlanta, Georgia

Request for authority to operate at 50% authorized power

## MEMORANDUM OPINION AND ORDER

Adopted: December 13, 1982; Released: December 22, 1982

BY THE COMMISSION: COMMISSIONER RIVERA CONCURRING IN THE RESULT.

1. On September 29, 1982, the Commission denied the request of Broadcast Corporation of Georgia, permittee of commercial television station WVEU(TV), Channel 69, Atlanta, Georgia, for authority to operate at 50% of authorized power for six months. *Broadcast Corporation of Georgia*, 52 R.R. 2d 530 (1982). WVEU now requests reconsideration of that action.

2. The background of this case was set out in our September 29 decision; however, a brief summary would be instructive. After its application for a

construction permit was granted on February 4, 1981, WVEU completed construction of its authorized facilities and commenced program tests at its authorized power. Complaints of objectionable interference were then received from 23 operators of land mobile radio facilities co-located with the WVEU transmitter atop the Peachtree Plaza Hotel in Atlanta. A Field Operations Bureau investigation confirmed the interference. Despite the installation of six cavity filters, a high power filter on one visual transmitter, minor modifications to its transmitters, and various measures to shield the two-way receives, objectionable interference persists - even at greatly reduced power.

3. In our September 29 action, we concluded that the interference is apparently due to three major factors:

1. The high power operation of WVEU (2630 kW visual effective radiated power) and the relatively low power operation of the land mobile radio repeaters;
2. The operation of the two services on immediately adjacent frequencies (channel 69 on 800–806 MHz; land mobile radio facilities on 806.0125 MHz and higher); and
3. The close physical proximity of the WVEU transmitting antenna to the land mobile radio repeaters (between 50 and 100 feet apart).

4. We disagreed with WVEU's conclusion that everything within the present state of the art has been done to eliminate or limit the interference problem. Although we noted that WVEU had undertaken numerous measures to avoid or alleviate interference, there remained several other measures as yet untried, and we gave six illustrative ones that WVEU might consider.

5. We concluded that WVEU, as the "newcomer," had the responsibility to implement effective measures to rectify the interference it was causing to other authorized and existing services. *Sudbrink Broadcasting of Georgia, Inc.*, 65 F.C.C. 2d 691, 692 (1977). Consequently, WVEU was ordered to take further corrective measures to eliminate the objectionable interference. Further, the land mobile radio licensees were directed to cooperate by offering suggestions to resolve the problem, although the burden of correcting the interference, financially and otherwise, is upon WVEU. *Jack Straw Memorial Foundation*, 35 F.C.C. 2d 397, *recon. denied*, 37 F.C.C. 2d 544 (1972). The Commission then denied WVEU's request for authority to operate at half - power for six months, ordered WVEU to commence corrective measures within 30 days and ordered it to show, within 90 days thereafter, that the interference has been eliminated or that substantial progress to that end has been made. On November 19 WVEU submitted a report of the initial efforts it has made to comply with the Commission's Order, including an offer to relocate the affected land mobile radio repeaters at WVEU's expense.

Nevertheless, it has requested reconsideration of our September 29 decision.

6. In its petition for reconsideration, WVEU sets out a series of arguments against our September 29 action, none of which are persuasive and most of which do not address the core problem of how to eliminate the interference. WVEU reargues that it has done all that it could within the state of the art to eliminate the harmful interference and rejects five of the six Commission suggestions for resolving the problem as impractical or unlikely to succeed. On December 6, 1982, WVEU filed an engineering statement to support its conclusions. Assuming the validity of the engineering statement, however, the fact remains that there would be objectionable interference at the power requested by WVEU. Our suggestions were intended to be illustrative only. We did not attempt to dictate an exhaustive list of the measures which WVEU should take, but, rather, we simply sought to offer some suggestions which apparently had not been tried.

7. WVEU admits that a change of either its frequency or that of the affected land mobile radio facilities is a potentially feasible engineering solution to the interference problem. It argues, however, that it would be prohibitively expensive for it to move and that it has already spent more than its fair share in eliminating the problem. Although its November 19 report, seemingly, indicates otherwise, in its petition for reconsideration WVEU is of the opinion that the affected land mobile radio operators should be required to change frequencies at their own cost. Although the land mobile radio licensees are expected to cooperate with WVEU by offering suggestions to resolve the problem[1] and by implementing a solution to it reasonable in both cost and configuration—so as to preserve their service as well as that of WVEU, there is no doubt that the financial responsibility for eliminating the objectionable interference falls upon the "newcomer."[2] WVEU argues, however, that not until it began program tests was it aware of the severity of the interference that would result and that, therefore, the "newcomer" is responsible" policy should not be applied to it on equitable grounds. By its own admission, however, WVEU was aware of possible interference even before it began construction,[3] but it proceeded, nevertheless. Further, regardless of whether it was aware of the possible interference, the fact remains that, at its proposed power, WVEU would cause objectionable interference to several land mobile radio repeaters. We recognize that whatever measures WVEU may try could well cost the station greatly in excess of that

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[1] *Jack Straw, supra.*

[2] *Sudbrink, supra* at p. 692; *Midnight Sun Broadcasting Co.*, 11 F.C.C. 1119 (1947).

[3] Affidavit of Vance Eckersley, Vice President and General Manager of Broadcast Corporation of Georgia, April 22, 1982.

which it anticipated. This, however, cannot influence our perception of the public interest. We have reviewed WVEU's petition for reconsideration and find nothing in it which we have not already considered and decided. We are, therefore, not persuaded that our previous action was in error or that it should be reversed.

8. Accordingly, IT IS ORDERED, That the petition for reconsideration filed by Broadcast Corporation of Georgia IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

William J. Tricarico *Secretary*

Issue, Enlargement of, Denied
Misrepresentation
Reconsideration, Petition for, Denial of

Petition for reconsideration of *Central Texas Broadcasting Co. Ltd.* 90 FCC 2d 583, and request for remand for further hearing on misrepresentation/lack of candor issue denied.
*-Central Texas B/cing Co. Ltd.*
BC Docket No. 79–286

FCC 82R–77

**Before the**

## Federal Communications Commission

**Washington, D.C. 20554**

| | |
|---|---|
| In re Applications of | |
| CENTRAL TEXAS BROADCASTING CO., LTD<br>A Limited Partnership<br>(Robert A. Mann, General Partner)<br>Waco, Texas | BC DOCKET NO.<br>79–286<br>File No.<br>BPCT–5089 |
| BUSINESS COMMUNICATIONS, INC.<br>Waco, Texas | BC DOCKET NO.<br>79–287<br>File No.<br>BPCT–5126 |
| BLAKE-POTASH CORPORATION<br>Waco, Texas | BC DOCKET NO.<br>79–288<br>File No.<br>BPCT–5133 |
| HEART O'TEXAS BROADCASTING, INC.<br>Waco, Texas | BC DOCKET NO.<br>79–289<br>File No.<br>BPCT–5134 |
| For a Construction Permit for a New Television Broadcast Station | |

MEMORANDUM OPINION AND ORDER

Adopted: December 16, 1982; Released: December 22, 1982

BY THE REVIEW BOARD: BOARD MEMBER BLUMENTHAL CONCURRING WITH STATEMENT.

1. Blake-Potash, which was found to be the second best applicant for a new TV broadcast station, seeks reconsideration of our Decision granting the application of Central Texas. 90 FCC 2d 583, 51 RR 2d 1478 (Rev. Bd. 1982). At this late stage in the proceeding Blake-Potash rehashes old allegations which it relabels newly discovered evidence justifying a new hearing on a misrepresentation or lack of candor issue. As the Concurring Statement points out the only real change which has occurred since our Decision is an irrelevant change in the name of a corporation. For the reasons set out below, we will deny the relief requested by Blake-Potash. We once again caution applicants that allegations of misrepresentation and lack of candor are considered serious matters. *See* cases cited in *Millard Orick, Jr.*, 89 FCC 2d 571 (Rev. Bd. 1982), *review denied*, FCC 82–479, released November 3, 1982. Such charges should be made after serious reflection not only by counsel but by the client who may ultimately be adversely affected by careless filings.

2. The application of Central Texas was filed first and contained a representation that "Robert A. Mann will direct the day-to-day operation of the station on a full-time basis (*i.e.*, not less than 40 hours per week)." Decision, *supra*, paragraph 5. The application also contained a list of Mann's other business interests. Thus potential applicants had the opportunity to study Central Texas' application and in the light of the Commission's *Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393, 395–96 (1965), match or better Central Texas' proposal to integrate 100% of its management 40 hours per week. The three competing applications which were subsequently filed failed to match Central Texas' proposal. Instead they attempted to discredit that proposal at the hearing. The record reveals that the Administrative Law Judge permitted broad prehearing discovery into the finances and operation of every company in which Mann was affiliated and disclosure of confidential minutes of bank committee meetings. HOT's motion to produce documents for inspection, filed April 28, 1980; ALJ Order, FCC 80M–784, released May 14, 1980. Mann was also extensively cross-examined at the hearing by his competitors in an attempt to show that Mann either could not or would not devote 40 hours per week to the operation of the proposed station. Our review of the record on this point focused especially upon Blake-Potash's proposed findings of fact because its counsel had played the leading role in Mann's cross-examination. A majority of the Board concluded that, for the reasons detailed in our previous Decision, Central Texas should be awarded full integration credit. Decision, *supra*, paras. 4–14, 31.

3. In support of its petition, Blake-Potash contends that Mann failed to disclose the extent and nature of his relationship and responsibilities with

First Financial Bancorporation (Bancorporation), a bank holding company now called United Bankers, Inc., in order to buttress his integration claim and therefore secure a comparative advantage in this proceeding. Specifically, it asserts that in interrogatories it asked Central to identify each business interest of Mann and to describe the nature of his responsibilities with respect to these businesses, and that Central responded that Mann was Chairman of the Board of Bancorporation, that his responsibilities with regard to that company were "none," and that Walter J. Rusek was the chief operating officer. Blake-Potash argues that this response, as well as a statement in Central's hearing Exhibit 1 at p. 5 which refers to Mann's responsibilities with Bancorporation as "non-executive," were deceptive since a registration statement filed with the Securities and Exchange Commission by Bancorporation on May 30, 1980 listed Mann as Chief Executive Officer (in addition to Chairman of the Board), and a prospectus for a public stock offering made on April 22, 1982 by Bancorporation under the name of United Bankers, listed Mann as a member of the executive committee. It alleges that the company is expanding its holdings and that Central has never reported to the Commission that Mann was Chief Executive Officer of Bancorporation or that the company changed its name. Blake-Potash further claims that there is no record evidence of how much time Mann will devote to Bancorporation and that it is thus impossible to conclude that Mann will have sufficient time to effectuate his integration proposal.

*DISCUSSION*

4. Blake-Potash fails to raise any new matter of substance warranting remand. Initially, there is no basis for a misrepresentation issue. Misrepresentation connotes a false statement of an objective fact intentionally made to deceive. *Fox River Broadcasting, Inc.*, 88 FCC 2d 1132, 1135, 50 RR 2d 1321, 1324 (Rev. Bd. 1982); and *West Coast Media, Inc.* v. *FCC*, No. 81–1548, D.C. Cir., Dec. 7, 1982, Slip Op., p. 6, "an intent to deceive the FCC . . . is at the heart of misrepresentation cases." Here, Blake-Potash has failed to make any showing that the representations made in Central's response to interrogatory or its hearing exhibit were untrue or intentionally made to deceive. It is undisputed that Mann is Chairman of the Board of Bancorporation and that Walter Rusek is chief operating officer. Moreover, it is clear on the basis of the record evidence that Central's descriptions of Mann's responsibilities (whether "none" or "non-executive") were intended to convey the idea that he has no active *day-to-day prescribed duties* pertaining to the management functions of any of his outside business interest, including Bancorporation. Tr. 664. Mann testified that aside from rendering financial advice when sought (Tr. 663), he has no specified duties other than attendance and participa-

tion at the Board meetings. Central Exh. 5, p. 5. Blake-Potash has not shown that this testimony was false or inaccurate.

5. Nor do we believe that Blake-Potash has sufficiently supported its proposed lack of candor issue. Lack of candor is a failure to be completely forthcoming in the provision of information that could illuminate a decisional matter. *Fox River Broadcasting, Inc., supra* at 1137, 50 RR 2d at 1325. In this proceeding, the only information allegedly not reported is Mann's other title of Chief Executive Officer of Bancorporation and that corporation's name change to United Bankers, neither of which facts we perceive to be of decisional significance. Central identified Mann as Chairman of the Board of Bancorporation and the company's by-laws specify that the duties of Chairman of the Board and Chief Executive Officer are the same. With regard to the corporate name change, there is no indication that it had any substantive effect on Bancorporation's activities or on Mann's role with that company. Finally, as to the claim that Mann will not meet his integration commitment, Blake-Potash is mistaken when it claims that the record contains no evidence of how much time Mann will devote to Bancorporation. Central stated at the hearing that Mann would devote approximately two hours per month to that company, mainly attending Board meetings. Central Exh. 5, p. 5. Mann testified that the company had just become operational a few days before the hearing began. Tr. 663. Central has appended to its opposition Mann's affidavit in which he avers that he is currently devoting some two to three hours per month to Bancorporation and that he expects the amount to diminish somewhat now that the organization of the company is complete. In any event, with regard to Blake-Potash's contention that the activities of this company are expanding, Mann reiterates his commitment to resign from Bancorporation should those responsibilities impinge on his broadcast commitment.

6. We have also reviewed a motion to file a supplement to the petition for reconsideration, and the supplement itself, filed on October 12, 1982, by Blake-Potash and responsive pleadings. These pleadings are based upon material contained in a written settlement offer tendered by Central Texas to the applicants in this case and subsequently rejected. The motion will be denied and the supplement stricken. *See Horne Industries, Inc.*, 52 RR 2d 1009 (Rev. Bd. 1982), where similar material was stricken because of the public policy favoring confidentiality of discussions in order to encourage negotiations and settlements. The material is not within the exception to Rule 408, Federal Rules of Evidence.

7. In sum, nothing in Blake-Potash's petition requires us to reconsider our Decision or to remand this proceeding for further hearing. Robert Mann's intention to work full-time at the proposed station and his ability to carry out his commitment have not been undermined by the allegations before us. Thus, we conclude that no modification is required of our

holding that Mann's proposal is reliable, established on the basis of credible and persuasive record evidence, and consistent with the dictates of Commission precedent.

8. ACCORDINGLY, IT IS ORDERED, That the petition for leave to amend filed July 23, 1982 by Business Communications, Inc. IS GRANTED, and the amendment IS ACCEPTED; and

9. IT IS FURTHER ORDERED, That the petition for reconsideration filed August 12 and the motion for leave to file supplement to petition for reconsideration filed October 12, 1982 by Blake-Potash Corporation ARE DENIED, and the supplement IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Joseph A. Marino
Chairman, Review Board

Concurring Statement of Board Member
Norman B. Blumenthal

Before the Board is what might be fairly styled "Bankers' Hours Redux," a sequel to that lively Texas saga in which the Board majority selected for television licenseeship, Robert Mann, the Waco financier with the errant printer and an Augustinian antipathy towards money.[1]

In explaining why his full-time integration proposal was plausible, our "retired" banker[2] lamented (90 FCC 2d at 589, quoting Tr. 1494):

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[1] AT hearing, Mann attempted to garnish his integration proposal by claiming (Majority Decision, 90 FCC 2d at 589):

> . . . And there comes a time, I think, in a persons' life when they feel like the pursuing the dollar is not just all there is to life.
>
> And I just feel like that through this, this is—will be a new challenge and a rewarding experience for someone interested in a fulfilling experience.

Despite this saintly disdain for mammon, it is salient that the prize in this shoot-out is not a non-commercial license. Neither has Mann represented that profits from this venture will go to hurricane victims in Brownsville.

[2] Mann's retirement needs some qualification: he expressly proposes to retain these positions (90 FCC 2d at 599):

| | |
|---|---|
| First Bank and Trust | Director, Chairman of the Board |
| Citizens State Bank | Director, Chairman of the Board |
| Omnibus Corporation | Chairman of the Board |
| D.P. Mann Trust | Trustee |
| Hattie B. Mann Trust | Trustee |
| Sabine Bank | Director, Chairman |
| First Financial Corporation | Director, Chairman of the Board |
| Robert A. Mann Foundation | Director, Chairman of the Board, President |
| First Financial Bancorporation | Director, Chairman of the Board |

> I've been somewhat abused by the banking industry, and have become disenchanted with it. I am in the middle of a divorce proceeding with my wife, which has been going on for quite some time, and I really feel like that—that I would like to do something worthwhile with my life that's a challenge, that yet at the same time offers an attempt to have a fulfilling contribution to the public interest which I view participation in this broadcast facility to be.

Is this the Epiphany of "J.R." Mann?

Blake-Potash seeks reconsideration because, contrary to the valedictory expectations implied by Mann's catharsis, neither Mann nor the banking entities he controls are proposing liquidation or even stasis. In support of its request, Blake-Potash submitted a Registration Statement (Form S-14) filed with the SEC on May 30, 1980 by the First Financial Bancorporation, Inc. in connection with the acquisition of two Texas banks. The Statement is signed by "Robert Mann, Chairman of the Board, Chief Executive Officer."[3] It also submits a prospectus issued on April 22, 1982 by United Bankers, Inc. ("Robert Mann, Chairman of the Board of Directors") in which it is asserted[4]:

> It is the intention of United to continue to seek to acquire controlling interests in other banks and other banking-related businesses as permitted by the regulations adopted by the Board of Governors of the Federal Reserve System (the 'Board') under the Bank Holding Company Act of 1956, as amended.

In truth, however, nothing much has happened here except that First Financial Bancorporation, Inc. has changed its moniker to United Bankers, Inc. The Board has considered the substance of these apparent contradictions in Mann's career aspirations in its Decision and the majority has rejected Blake-Potash's position. Accordingly, I concur in its instant denial of reconsideration; the legal threshold for granting reconsideration has not been met.

In so concurring, I do not for a minute rescind my prior dissent. The Lone Star state is already a wondrous pantheon, enriched in color by its tall tales of folk heroes whose exploits have assumed mythological dimension. If Central Texas successfully stakes a claim to the Waco CP, future generations of Texans will give a reverential ear to the legends of Jim Bowie, Sam Houston, Tom Landry . . . and Bob Mann.

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[3] Blake-Potash Petition, Exh. 2

[4] *Id.*, Exh. 5.

Depreciation Rates

Commission approved modified depreciation rates for fourteen domestic telephone companies consisting of nine AT&T, three GTE and two Continental affiliates. These rates are based upon the Straight Line Equal Life Group (SLELG) and Remaining Life (RL) methodologies approved by the Commission in its Report and Order in Docket No. 20188, 83 FCC 2d 267 (1980), reconsideration, 87 FCC 2d 916 (1981).

*-Depreciation Rates*

FCC 82–542

**Before the**

## Federal Communications Commission

**Washington, D.C. 20554**

In the Matter of

The Prescription of Revised Percentages of Depreciation pursuant to Section 220(b) of the Communications Act of 1934, as amended for:
Bell Telephone Company of Nevada
The Bell Telephone Company of Pennsylvania
Cincinnati Bell, Incorporated
The Diamond State Telephone Company
The Mountain States Telephone and Telegraph Company
New England Telephone and Telegraph Company
New Jersey Bell Telephone Company
Pacific Northwest Bell Telephone Company
The Pacific Telephone and Telegraph Company

ORDER

Adopted December 8, 1982; Released: December 14, 1982

BY THE COMMISSION:

## *I. Introduction*

1. Section 220(b) of the Communications Act of 1934, as amended, 47, U.S.C. §220(b), states that the Commission shall, as soon as practicable, prescribe classes of property for which depreciation charges may be included in operating expenses and the precentages of depreciation which shall be charged to each of the classes. It also states that the Commission may, when it deems necessary, modify the classes and percentages so prescribed.

2. By this order we prescribe revised percentages of depreciation (depreciation rates) for the nine Bell Operating Telephone Companies (BOTC's) listed on page 1 using both the straight line vintage group remaining-life (remaining-life) and straight line equal life group (SLELG) methods.

## *II. Background*

### A. *Remaining-Life Method*

3. Prior to 1981, we had only used the straight line vintage group whole-life (whole-life) depreciation method in prescribing depreciation rates for telephone companies' plant. Using this method, we had attempted to determine the appropriate depreciation accruals applicable to each year's operations using current estimates of life and net salvage. As estimates of life and net salvage changed over time, the whole-life rates were changed in accordance with these changes in estimates. However, using whole-life concepts, no attempt was made to adjust the rates to allow for reserve surpluses or deficits resulting from the cumulative over- or under-estimation of life and net salvage factors. This changed with our final decision in FCC Docket No. 20188, 83 FCC 2d 267 (1980), *reconsideration*, 87 FCC 2d 916 (1981), where we revised Part 31 of the Rules and Regulations, the "Uniform System of Accounts for Class A and B Telephone Companies," to allow the use of the remaining-life depreciation method. The remaining-life method is designed to distribute the unrecovered cost (original cost less the sum of the depreciation reserve and future net salvage) of a group of assets over its estimated average life expectancy; thus, this procedure includes an adjustment which allocates any reserve deficit or surplus over the estimated average remaining life.

4. As noted in Docket No. 20188, prior to 1981 the BOTC's did not maintain depreciation reserves by plant account, but rather as one overall reserve balance. Therefore, remaining-life rates could not be determined for the BOTC's until their overall depreciation reserves were allocated to the various plant accounts. In our Supplemental Opinion and Order in Docket No. 20188, 87 FCC 2d 1112 (1981), we concluded that the historical recordation of debits and credits is the method by which the accumulated

depreciation reserve should be allocated to individual plant accounts and thereafter maintained. We stated that carriers should disaggregate the overall reserve and that henceforth each carrier should maintain depreciation reserves for each category of property for which we prescribe depreciation rates.

5. We directed the staff to phase in the implementation of remaining-life depreciation rates in conjunction with the normal triennial represcription cycle (see paragraph 11). Implementation began with the companies that were regularly scheduled for review in 1981. Those companier submitted studies requesting revised depreciation rates using the remaining-life method. After a complete review, we adopted remaining-life depreciation rates for those companies in January. *See* FCC 82–39, 88 FCC 2d 1223 (1982). Remaining-life rates for the carriers normally scheduled for review in 1982 (see the list on page 1 of this order) were reviewed in detail this year. Our findings and conclusions regarding these rates are discussed beginning in paragraph 27.

B. *Straight Line Equal Life Group Method*

6. In Docket No. 20188, we also amended our rules to permit the use of the SLELG depreciation method for new additions to plant as an alternative to the straight line vintage group (SLVG) method, provided that adequate data is available for the proper application of the method.

7. The primary differences between the SLELG and SLVG methods lie in the definition of the basic depreciation groups and in the approach each takes in spreading the original cost of assets comprising the basic groups over their estimated average service lives. While SLVG forms its basic groups by combining all units placed in one year (i.e., a vintage group), SLELG creates its basic groups by combining all units within each vintage group which share an equal life expectancy (i.e., an equal life group). While the SLVG method is designed to depreciate 100% of the original cost of a vintage, on average, over the life cycle of each vintage, the SLELG method is designed to depreciate 100% of the original cost of each plant unit over its life. As a consequence, if projections are accurate, the SLELG method should allow for depreciation at a rate more representative of the actual consumption of units of property than SLVG. We concluded in Docket No. 20188 that the proper application and monitoring of this method would not only enhance the carriers' cash flow and present to all interested parties a more accurate and objective financial picture of the carriers' operations and capital requirements, but would also benefit their customers by encouraging innovation and the introduction of new technology.

8. Under both the SLVG and SLELG methods, retirement projections, service life estimates, and depreciation rates are normally determined, in part, through the use of survivor curves. These survivor curves define the

relationship between the age of plant investment and the relative percentage expected to remain in service. Under the SLELG methodology, the survivor curves assume an added significance—that of defining the basic (equal life) groups. Under the SLVG method, most survivor curves have been selected only after the staff has completed detailed statistical analysis of historical retirement data. With the added significance of the survivor curves in the SLELG method, the availability and analysis of historical retirement data becomes even more important.

9. We recognized the importance of adequate data in Docket No. 20188 where we found that the SLELG method is acceptable, provided that:

> ". . . it is assured that adequate data is available for proper application of the method; that record keeping and reporting practices will enable monitoring of the reasonableness of the rate of allocation of both original cost and provisions for salvage and removal; that such allocation of original cost will achieve allocation over the service life of the property neither more nor less than 100% of the investment net of salvage value."

Accordingly, we directed the staff to take such measures as may be necessary to insure the measurability and accountability of the results under the SLELG method.

10. We further directed the staff to phase in the implementation of SLELG depreciation rates beginning with the outside plant accounts, followed by the central office equipment accounts, and concluding with all other plant accounts. In accordance with this directive, the staff reviewed SLELG rates for the outside plant accounts for four GTE companies last year, and in January of this year we adopted SLELG rates for new additions to most of the outside plant accounts for those carriers. *See* FCC 82–53, 88 FCC 2d 1567 (1982). In addition, SLELG rate proposals were reviewed for the outside plant accounts for most of the remaining companies not scheduled to undergo a complete review of depreciation rates in 1982. As a result of that review, we adopted SLELG rates for most of the outside plant accounts for those companies in July. *See* FCC 82–353, 90 FCC 2d 964 (1982) and FCC 82–354, 90 FCC 2d 997 (1982). SLELG rates for the central office equipment and outside plant accounts of the carriers listed on page 1 of this order were also reviewed in detail this year. Our findings and conclusions regarding these rates are discussed below beginning in paragraph 28.

C. *Companies Scheduled for Review During 1982*

11. Since the late 1940's, the Commission has reviewed and prescribed the depreciation rates of approximately one-third of the larger FCC-subject telephone companies each year. In most cases we have prescribed rates for a carrier only after the following actions have been completed:

(1) Submittal of depreciation studies by the carrier.

(2) Staff review of the carrier's filings and studies in support of its proposed life and salvage factors.
(3) Independent staff analysis of such information as the carrier's plant mortality data and equipment retirement plans.
(4) Preparation of preliminary staff recommendations.
(5) Discussion of the carrier's filings and the preliminary Commission staff proposals at a conference in which representatives of the carrier and the staffs of the respective state commissions and the FCC participate (i.e., a three-way meeting).

12. In conjunction with the normal triennial represcription cycle, the nine companies whose rates are under consideration here submitted studies proposing new depreciation rates based upon revised life and salvage estimates, using the remaining-life method for all plant accounts and the SLELG method for new additions to the outside plant and central office equipment accounts. These studies were reviewed in detail by the staff, which then prepared its own preliminary life, net salvage, and rate proposals and forwarded then to the companies and the respective state commissions. Some of the state commissions prepared similar studies and recommendations. Three-way meetings were held at which the life, net salvage, and rate proposals of all three parties were throughly discussed.

13. Because this was the first time SLELG rates were being proposed for the central office equipment accounts, considerable analysis was required. As a result, in certain instances, the staff was unable to submit its SLELG recommendations prior to the three-way meeting. After completing its analysis and arriving at recommendations, the staff, on October 4, 1982, issued a public notice (Report No. 2967)[1] entitled, "Depreciation Rate Prescriptions Proposed For Domestic Telephone Companies." This public notice summarized the FCC staff's proposals for new or revised depreciation rates and the change in depreciation expense that would result if those proposed depreciation rates were approved. On October 5, 1982, the staff transmitted to each company and respective state commission a copy of the October 4 public notice, schedules containing the proposed remaining-life and SLELG rates, and a discussion of the staff analysis underlying the proposed SLELG depreciation rates. After further analysis and discussion (primarily through telephone conversations and correspondence) the staff revised its SLELG proposals for certain of the central office equipment accounts. In a October 19, 1982 letter to the companies and the respective state commissions, the staff discussed these changes and the underlying reasons for the changes.

14. For most of the companies under review, agreements regarding the life and net salvage estimates were reached between our staff, the com-

[1] The public notice was erroneously dated October 1, 1982; however, October 4, 1982 is the correct issue date.

panies, and the respective state commission staffs. There were a few instances in which three-way agreement was not reached and those instances are discussed below, beginning in paragraph 27.

### *III. Summary of Comments*

15. Comments in response to the October 4 public notice were received from the state regulatory commissions of California, Maine, New Mexico, Oregon, Washington and Wyoming. American Telephone and Telegraph Company (AT&T) filed comments on behalf of itself and the BOTC's. Pacific Northwest Bell (PNB) and Cincinnati Bell (CBI) filed separate comments.

16. All respondents who commented on effective dates supported the prescription of depreciation rates on the effective dates requested by the companies. AT&T noted that in the past the BOTC's usually opted for revised rates effective retroactively to the first of the year in which they had been filed. AT&T now believes that it has become necessary to allow for alternative effective dates, depending on the circumstances of each company, in order to provide a better opportunity for each company to match its revenues with its depreciation expenses. AT&T noted that the Commission has already recognized the need to allow depreciation rates effective at various times throughout the year of filing in its Order on Reconsideration in Docket No. 20188, *supra*. PNB, CBI, and the California Commission generally concurred with the AT&T opinion on effective dates CBI noted that it beleives the choice of effective date is its own under Section 43.43(e) of our rules. It also commented that if a January 1, 1982, retroactive effective date were adopted, CBI would have to charge an extra five months of depreciation expense against its 1982 operations. CBI further stated that it had not budgeted for this extra expense and has no possibility of matching this expense with actual revenues approved by the state commissions. PNB commented along the same lines emphasizing the need to prevent a substantial mismatch of revenues and depreciation expense. The California Commission stated that it was concerned that the FCC's adoption of retroactive effective dates could have an adverse impact on Pacific Telephone & Telegraph's (PT&T's) earnings level, equity value, and bond rating and that it would not be in the interest of either the company or the ratepayer. California stated that, if the proposed changes in depreciation expense were approved retroactively, PT&T would show a large, unrecovered depreciation expense with no corresponding revenues until new revenue rates were approved by California in 1983. California commented that it has, in the past, allowed concurrent booking of depreciation rate changes and the resulting revenue rate changes. The Oregon Commission recommended the approval of the effective dates proposed by PNB.

17. The proposed use of the remaining-life and SLELG depreciation methods was questioned in comments from the Maine, New Mexico and Wyoming commissions. These commissions asserted that it is their right to rule on the use of these methods for their intrastate jurisdictions. The California Commission noted that it supports the use of the remaining-life method, but that it objects to the use of the SLELG method because its adoption would increase subscriber rates and impose an added administrative burden. AT&T and the Oregon Commission supported the use of both the remaining-life and SLELG methods.

18. AT&T and PNB agreed with the FCC staff on most of the SLELG rates proposed; however, they disagreed with the FCC staff position that SLELG treatment should not be allowed for the COE-Step-by-Step and COE-Crossbar accounts on the grounds that they are "dying" accounts that will be almost fully retired within a few years. AT&T stated that, although these are "dying" accounts, investment of significant size will be added to these accounts over the next several years and that remaining-life rates would provide first year accruals of only one-half those provided by SLELG rates. AT&T also asserted that its detailed retirement plans for these accounts provide a sound basis on which to determine SLELG depreciation rates. Additionally, it stated that the FCC, in approving the SLELG method, left room for judgment as to what constitutes adequate data, and that in the exercise of this judgment weight should be given to the Commission's decision that SLELG is a preferred method. AT&T contended that the use of the SLELG method for "dying" accounts is important in that it helps prevent the deferral of capital recovery beyond the physical life of the property.

19. AT&T and BPN stated that it is appropriate to use SLELG rates for accounts, such as aerial wire, in which aged retirements are not maintained by most carriers. They stated that failure to do so would be tantamount to continuing to tolerate the infirmities of SLVG. They further stated that the records currently maintained by the BOTC's are adequate to support SLELG depreciation rates for these accounts.

20. AT&T, PNB, and the Oregon and Washington commissions stated that PNB's proposed depreciation rates for the COE-Electronic account are appropriate. AT&T and PNB stated that the life estimates for the COE-Electronic account were developed using the life cycle approach and were supported by PNB's planning engineers. They argued that the Commission should prescribe the rates proposed by PNB and not rely on "narrow, technical" factors to reject this company-specific estimate in favor of the FCC staff's porposal.

## *IV. Discussion of Issues*

### A. *Effective Dates*

21. With few exceptions, prior to 1981, depreciation rates were pre-

scribed retroactively to the beginning of the year in which they were filed. This appeared to be a reasonable practice inasmuch as the rates were based on depreciation studies as of that date (i.e., January 1). In 1981, with the initial implementation of the remaining-life and SLELG depreciation methods, many companies requested effective dates other than January 1, 1981. The companies maintained that, because of the controversy surrounding the Commission's approval of the new methods, it would be difficult to get approval of revenue rate increases from state commissions until the FCC had actually ordered new depreciation rates. The companies were also concerned that the states would not allow any retroactive revenue rates to match retroactive prescription of depreciation rates. After considering the regulatory and financial reporting aspects of this issue, we determined that, during this transitional period from whole-life to remaining-life and SLELG methods, we would allow the booking of the new rates on the various effective dates proposed by the companies. *See* FCC 82–39, *supra*.

22. This year the companies filed for effective dates ranging from January 1, 1982 to January 1, 1983. They argued that Section 43.43(e) of our rules and our Order on Reconsideration in Docket No. 20188, *supra*, allow—at the discretion of the company—the booking of new depreciation rates retroactively to a date no earlier than the first of the year in which they were filed. Section 43.43(e) of our rules states:

> "Unless otherwise directed . . . proposed changes in depreciation rates shall be filed at least ninety (90) days prior to the last day of the month with respect to which the revised rates are first to be applied . . . and such rates *may be made retroactive* to a date not prior to the beginning of the year in which the filing is made." [Emphasis added.]

The companies also cited the Order on Reconsideration in Docket No. 20188, 87 FCC 2d 916 at paragraph 16, where we stated:

> ". . . retroactive application of the depreciation rates to the beginning of the year is permissive, not mandatory."

23. We maintain our belief that as a matter of sound accounting, depreciation rates should be applied on dates corresponding as closely as possible to the date of the underlying depreciation study. In Docket No. 20188, we determined that proper capital recovery is predicated, in large measure, upon the timely application of the correct depreciation rates. We also noted that, if inaccurate depreciation rates are applied, the resulting misstatement of operating expenses could harm present and potential investors and, ultimately, ratepayers by denying them and the regulators an accurate, objective financial picture of the companies' operations and capital requirements.

24. Nevertheless, we agree with the companies that, during this period of continuing transition to the new methods, retroactive booking of depreciation rates would create uncertainties which, contrary to our intent, may deny some companies a reasonable opportunity to achieve capital recovery. The use of these new methods has resulted in both significant depreciation expense changes and in the requirement for additional company studies to support prescriptions. There has also been resistance on the part of some states to accept remaining-life and SLELG rates at all, and there may be a concomitant reluctance by certain state commissions to grant intrastate revenue rate increases until we actually prescribe depreciation rates using the new methods. We shall, therefore, accept the effective dates as filed by the companies.

B. *Use of SLELG*

25. In our decision in Docket No. 20188 we considered the arguments expressed by the parties for and against the use of the SLELG method and determined that, provided adequate data is available, the use of SLELG rates is appropriate. In the discussion in the Final Report and Order we found that the use of SLELG comports with the mandate of Section 1 of the Communications Act, "to make available . . . a rapid, efficient, nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges . . ." 47 U.S.C. § 151. We reaffirmed our decision allowing the use of SLELG in the Order on Reconsideration as well as in three prescription orders approved this year (i.e., FCC No. 82–53, 82–353, and 82–354). Nevertheless, several states have again questioned whether the use of SLELG rates is warranted. Inasmuch as these states have not raised any new arguments or evidence regarding the use of SLELG rates, we have no basis to reverse our decision on this matter. Our rules, as amended in Docket No. 20188, clearly allow the use of SLELG for accounts in which adequate data is available to properly apply and monitor it. Therefore, we will allow its use.

C. *Preemption of States*

26. Several state commissions stated that they have not approved remaining-life and SLELG procedures for their jurisdictions. The presence or absence of state commission approval of remaining-life and SLELG rates does not control the prescription of remaining-life or SLELG rates in this order. The prescription of depreciation rates is plainly a matter within the Commission's jurisdiction under Section 220(b) of the Communications Act. We do not decide in this order the effect of our prescribing these rates for intrastate ratemaking purposes. Rather, the preemptive effect of this Commission's accounting and/or depreciation determinations is before us in a separate proceeding initi-

ated by a further *Petition for Reconsideration* filed by AT&T in Docket No. CC 79–105, 85 FCC 2d 818 (1981), *recon.*, 89 FCC 2d 1094 (1982), and a *Petition for Declaratory Ruling* filed by the General Telephone Company of Ohio.

D. *Life and Net Salvage Factors*

27. Three-way agreement at the staff level (i.e., the staffs of the FCC, the companies, and the state commissions) as to life and salvage factors was reached in nearly all accounts and jurisdictions, with the following exceptions: Mountain Bell in Wyoming for COE-Crossbar, New England Telephone in Maine for various central office equipment, terminal equipment and outside plant accounts, and Pacific Northwest Bell in Idaho, Oregon, and Washington for COE-Electronic. After the three-way meetings, the companies filed for revised depreciation rates proposing their own recommendations where three-way agreement was not reached. The October 4, 1982, public notice on which comments were requested, reflected the FCC staff's proposals for these accounts. In certain instances the company and FCC staff positions were identical.

28. At the three-way meeting and in subsequent correspondence, the Wyoming Commission voiced its objections to the COE-Crossbar depreciation rate proposed by Mountain Bell. It stated that it is not economically sound to dispose of modern equipment (i.e., crossbar) that is providing adequate service. On the other hand, Mountain Bell has analyzed its central offices and determined an equipment modernization program that it believes will minimize overall revenue requirements to its customers. The FCC staff reviewed the company's proposed retirement program for Wyoming and found that it was not unusual or accelerated compared with other jurisdictions. In fact, retirements in Wyoming are planned at a slower rate than in most jurisdictions. We do not decide here whether the company's retirement program is sound or otherwise in the public interest. This issue is a matter which can be resolved in state and Federal rate proceedings when the carrier seeks to recover its depreciation expenses. Our purpose here, in the depreciation process, is to forecast if Mountain Bell's retirement program is attainable and if it is likely to be carried out. In other words, the effort here is to estimate the life and salvage characteristics and not to decide upon the propriety of company policy. The retirement program in Wyoming is more conservative than retirement programs for most BOTC jurisdictions; as a result, we belive it is not unreasonable to expect that the program will be carried out. Consequently, we agree with the carrier's filing in this instance.

29. At the three-way conference the Maine Commission expressed its concern that New England Telephone and Telegraph Company's (NET's) proposed life estiamtes for many accounts were too short. Maine stated the NET's planned crossbar retirements were not considered to be in the

best interests of the rate-paying public. NET disagreed. It stated that replacing crossbar switching offices with electronic switching offices is in the best interest of both the company and its customers. Among the reasons NET offered in support of crossbar replacement are projected savings in maintenance expense and floor space requirements and benefits derived from increased revenues from new vertical services. Again, we do not decide here whether the company's crossbar replacement program is in the public interest, but rather, if the program is attainable and is likely to be carried out. Staff analysis shows that, to date, the COE-Crossbar retirements forecast by NET have been on target. Furthermore, NET's overall retirement program is somewhat conservative in comparison with other jurisdictions. As a result, at this time we have very little reason to doubt that the relacement of COE-Crossbar will take place in accordance with the timetable described by the company. We, therefore, believe that NET's life estimates for COE-Crossbar are credible.

30. The Maine Commission also stated that lives proposed by NET for several terminal equipment accounts were also too short. Maine stated that life indications for the Telephone and Miscellaneous account remained high despite competition. The company stated its belief that changes in customer demand, equipment obsolescence, competition and regulation will cause an acceleration of retirements in the future, thus causing life indications to decline. We agree with the Maine Commission that an increase in life over that underlying the currently prescribed rate is justified. However, NET has proposed an increase in life of over two years. We believe that, in the next several years, the factors cited by NET will likely pull the life indications down; therefore, the two year increase already proposed by the company appears to be believable. Our staff has found that recent PBX retirement levels in Maine support NET's life estimates for the PBX accounts. We, therefore, agree with the company's proposals in these accounts.

31. For several outside plant accounts, the Maine Commission stated that life indications are high and that there is no justification for the short lives proposed by NET. In contrast, NET argued that if it were to limit its long term plans to the use of its present copper cable plant, it would be unnecessarily limiting the services that it could provide its future customers. NET believes that technological improvements, competition and customer demand will cause significant increases in retirements and decreases in lives of the outside plant facilities. We believe that, although life indications have not shown significant decreases yet, the deployment of fiber optic technology will likely impact the lives of the existing outside plant facilities. In addition, it is clear that the company has firm plans for implementing fiber optic cable routes which will likely increase retirements of the copper cable plant in the next few years. The staff also notes that the lives proposed for Maine are comparable to the lives which were

agreed to for the other states in which NET operates. We, therefore, find the company's proposals in the attached appendices to be appropriate.

32. No ageement regarding the life estimate for COE-Electronic was reached at the three-way meeting for any of the three states in which PNB operates. The staff of the Idaho Commission stated that it believed PNB's life proposal for that state was unreasonably low. The FCC staff did not disagree with PNB's life proposal for Idaho, but found that its life proposals for Oregon and Washington were too low and were largely unsupported. Inasmuch as the investment in this account is the most modern, technologically advanced equipment available, PNB could not base its proposals on well-defined equipment replacement studies. Instead it based its proposals on product life cycle studies similar to those used by other BOTC's. The results of such studies for similar to those used by other BOTC's. The results of such studies for technologically advanced equipment (i.e., electronic switching equipment) are extremely questionable, because without knowing when a succeeding technology will be available—or even what that technology is likely to be—it is virtually impossible to define the timing of the product life cycle. Nevertheless, based upon such studies, PNB proposed reductions in equipment lives of 49% in Oregon and 45% in Washington, and, in both cases, it proposed lives several years shorter than those found to be appropriate in any other BOTC jurisdiction.

33. The staff reviewed PNB's studies in detail and became convinced that a significant reduction in life was appropriate; however, it could find no valid reason why PNB's lives should be expected to be shorter than those of all other BOTC's. In fact, a review of PNB's records indicates that, since the late 1960's, its rate of deployment of electronic switching has been virtually identical to that of the entire Bell System. Contrary to PNB's claim for Oregon and Washington, we believe that its lives should be comparable to those used by other BOTC's. We therefore agree with the lives proposed by the staff for Oregon and Washington. We note that PNB's proposal for Idaho is, in fact, in line with other BOTC jurisdictions and we agree with its proposal.

34. In FCC 82–353, 90 FCC 2d 964 (1982), we pointed out that, when there is a strong relationship between the age of retirements and net salvage, future net salvage estimates for embedded plant do not apply to future additions of plant. In the companies' most recent depreciation studies for the COE-Circuit and COE-Radio accounts, net salvage percentages and the age of retirements were demonstrated to be highly correlated. As a result, the future net salvage estimates used in determining the remaining-life rates for embedded plant are not appropriate for use in determining SLELG rates for new additions to plant. The staff analyzed these accounts and made the necessary adjustments to convert future net salvage factors originally derived for embedded plant to future

net salvage factors for use with new additions to plant. The adjustments were provided to the carriers and state commissions in October, and no objections were raised. As a result, we support the staff's proposals for SLELG future net salvage percentages in these accounts.

E. *Accounts for which SLELG Rates are not Recommended*

35. In our final decision in Docket No. 20188 we found that the SLELG method is acceptable if adequate data is available for the proper application of the method and if the carriers' record keeping practices will allow for the monitoring of the reasonableness of the rates. In each of the three SLELG prescription orders that we have approved to date (i.e., FCC No. 82–53, 88 FCC 2d 1567 (1982), FCC No. 82–353, 90 FCC 2d 964 (1982) and FCC No. 82–354, 90 FCC 2d 997 (1982)), we concluded that aged retirement data is a minimum requirement for the proper application and monitoring of SLELG rates. In this proceeding AT&T and PNB commented that they believe SLELG rates should be allowed for all accounts regardless of whether aged retirement data is maintained. Neither AT&T nor PNB offered any new argument or evidence to support their contention. Thus, there is no basis on which to rescind the reporting requirements established in Docket No. 20188, and we conclude that it is inappropriate to prescribe SLELG rates for accounts in which vintage retirement data is not maintained.

36. The staff proposes that new additions to the COE-Step-by-Step and COE-Crossbar accounts not be depreciated using the SLELG method. They argue that it is impractical to determine reasonable future survivor curves for these additions because these accounts consist of classes of equipment which are being rapidly retired from service. The staff proposes that new additions, as well as embedded plant, in these accounts be depreciated using the remaining-life method, and asserts that the remaining-life method will assure timely and complete recovery of capital. AT&T and the Oregon Commission disagreed and argued that the interest of the FCC in Docket No. 20188 would be frustrated by not applying SLELG rates to these accounts.

37. The staff notes that estimated survivor curves for COE-Step-by-Step and COE-Crossbar have *not* been determined in previous depreciation studies and that it is impractical to do so at this time. This is because it has not been demonstrated that the companies can accurately estimate future additions or retirements for individual switching units. With the majority of remaining lives for electromechanical equipment in the three to seven year range, the error of these estimates will likely be significant. New additions to these accounts will clearly have very short and volatile estimated remaining lives, making the development of reliable survivor curves virtually impossible. Without reliable survivor curves the development of an SLELG depreciation rate is illusory. This is because the

remaining life "corrections" and curve shape changes would rapidly alter the overall depreciation rate for the account. We previously stated that SLELG rates should be used if adequate data exists to properly apply the method. Inasmuch as the future survivor curves cannot be practically determined, we do not believe that the proper application of the method can be accomplished for these accounts.

38. Additionally, as noted by AT&T, the current Bell System investment in the electromechanical accounts, is approximately $13 billion, virtually all of which will be retired over the next ten years. The current annual additions to central office equipment are nearly $7 billion. In this context we find that the $600 million being added annually to the electromechanical accounts, which consists largely of reused (i.e., previously installed) equipment and associated labor, is not significant.

39. AT&T is probably correct that the current remaining-life rates may be only one-half the first year SLELG rates. However, an examination of this by the staff revealed that, if remaining lives were updated annually, the resultant remaining-life rates would be comparable to the first year SLELG rates for COE-Step-by-Step and would average one-third lower for COE-Crossbar. In most cases remaining-life rates are *higher* than SLELG rates by the end of the second year. Considering the aforementioned volatility of the life and curve shape estimates underlying the SLELG method, we find that the additional accruals provided by the SLELG method are insignificant over the first two years of application.

40. We do not agree with AT&T that the use of the remaining-life method risks any deferral of capital recovery beyond the remaining-lives of the assets. Remaining-life rates are designed to completely depreciate invested capital over the remaining life of a group of assets. This feature was the primary reason that we changed our rules in Docket No. 20188 to allow the use of the remaining-life method. We concur with the staff's reasoning and find that the remaining-life method should be used for depreciation of the COE-Step-by-Step and COE-Crossbar accounts.

41. While we agree with the staff's reasoning on the use of the remaining-life method for the electromechanical accounts, we also believe that to assure full and timely capital recovery on these short remaining life assets, some special measure is required. We, therefore, direct the staff to update remaining-life depreciation rates for these accounts on an annual basis as requested by the companies or as is deemed necessary by the staff. These updates will assure that capital recovery is not unnecessarily deferred.

F. *Original Cost and Net Salvage Rates for SLELG*

42. We are only prescribing SLELG rates for the original cost portion for the first four years of new additions to most central office and outside plant accounts. These rates will be applied until the next triennial review

of depreciation for these companies. At that time the actual results of the use of the SLELG method will be evaluated, and methods and rates will be modified as necessary.

43. Present carrier accounting practices do not allow carriers to accumulate net salvage data by vintage for all classes of plant. For example, retirement of a complete line of poles may involve removal of poles of several different vintages, but would normally result in a single aggregate cost of removal and salvage from reuse or sale. In this situation it is not feasible to allocate that cost of removal or salvage among the different vintages in a meaningful manner. For this reason, instead of prescribing net salvage depreciation rates for each vintage, we are prescribing a single net salvage depreciation rate which is to be applied to all new vintages until the next regular review. *See* FCC 82–53, FCC 82–353, and FCC 82–354.

G. *Accounts for which Remaining-Life Rates are not Recommended*

44. In FCC Docket No. 79–105, *supra*, we amended the accounting rules for station connections and ordered that all FCC-subject carriers identify and assign the investment in Account 232, Station Connections, to at least two subclasses of plant—Station Connections-Inside Wire and Station Connections-Other. Our order required carriers to expense future costs associated with the Station Connections-Inside Wire subclass on a phase-in or flash-cut basis and to continue to capitalize future costs associated with the Station Connections-Other subclass. Because the retirement ratios and mortality dispersion patterns of the Station Connections-Other subclass are not similar to those for the account as a whole, the depreciation rates prescribed in the past for the entire Station Connections account could not be applied to the Station Connections-Other subclass. Instead, new rates had to be developed. The staff and AT&T held discussions and concluded that, in most cases, a 5% depreciation rate should be used until there was sufficient data to ascertain specific mortality characteristics which could then be used to prescribe more precise depreciation rates for this subclass. Consequently, in 1981, all AT&T companies filed requests for permission to adopt a 5% depreciation rate for the Station Connections-Other subclass. And, in January, in FCC Order No. 82–39, *supra*, we prescribed a 5% rate for all of the carriers whose rates are under consideration here.

45. In a separate proceeding initiated by an AT&T petition for rulemaking, (see our notice of proposed rulemaking in FCC Docket No. 82–679, 47 F.R. 44767) significant changes in the accounting rules for Station Connections-Other are under consideration. This proceeding will likely be concluded early in 1983. In the interim, we do not believe it prudent to change the existing 5% depreciation rate for this account.

46. In a few accounts with minimal plant balances, the use of the remaining-life method would result in negative depreciation rates because the reserve balances were in excess of service values (i.e., original cost less net salvage). The staff reviewed several of these instances and found that the primary cause was the transfer of plant from one account to another without a corresponding transfer of reserve amounts. The prescription of a negative depreciation rate is not consistent with generally accepted accounting principles. Therefore, we will adopt the use of a 0% depreciation rate for all accounts where the calculation of remaining-life depreciation rates would result in a negative rate. We recognize that this action does not totally resolve the problem (i.e., reserves greater than service values). However, the problem is technical in nature and can probably best be resolved at the staff level. We direct the staff to work with the carriers to determine what reserve transfers, if any, are required.

H. *Conclusion*

47. Having considered the positions set forth by the companies and respective state commissions at the three-way meetings, the responses to the staff's review letters and public notice, the recommendations of the staff, and the proposals of the companies, we find the remaining-life and SLELG rates listed in the appendices to be appropriate.

## *V. Ordering Clauses*

48. Pursuant to Sections 4(i) and 220(b) of the Communiations Act of 1934, as amended, 47 U.S.C. §§ 4(i) and 220(b), IT IS ORDERED, That the percentages of depreciation set forth in the Appendices to this order are prescribed effective on the dates listed. Appendix 1 contains remaining-life rates and Appendix 2 contains SLELG rates.

49. IT IS FURTHER ORDERED, That the companies shall submit to the Commission whole-life as well as remaining-life depreciation studies during the next represcription period.

50. IT IS FURTHER ORDERED, That the companies shall notify this Commission within 10 days of any deviation from the depreciation percentages and practices prescribed in this order.

FEDERAL COMMUNICATIONS COMMISSION

William J. Tricarico *Secretary*

APPENDIX 1

*FEDERAL COMMUNICATIONS COMMISSION*

*Schedule of Annual Percentages of Depreciation for*

*NEW ENGLAND TELEPHONE AND TELEGRAPH COMPANY—NEW HAMPSHIRE*

*Effective January 1, 1983*

| *Acct. No.* | *Class or Subclass of Plant* | *Average Remaining Life* | *Future Net Salvage* | *Depr. Reserve Ratio* | *Remaining Life Rate* |
|---|---|---|---|---|---|
| | | (Years) | (%) | (%) | (%) |
| 212 | Buildings | 35 | 2 | 18.3 | 2.3* |
| 221 | Central Office Equipment | | | | |
| | Step-by-Step | 5.6 | -5 | 39.2 | 11.8 |
| | Crossbar | 6.3 | -4 | 31.9 | 11.4 |
| | Non-Ded. Circuit | 14.3 | -1 | 28.8 | 5.0 |
| | DDS Circuit | 10 | -4 | 8.7 | 9.5 |
| | Radio | 9.1 | -5 | 40.3 | 7.1 |
| | Electronic | 25 | 0 | 8 | 3.7 |
| 231 | Station Apparatus | | | | |
| | Teletypewriter | 5.8 | 10 | 19.9 | 12.1 |
| | Telephone & Miscellaneous | 8.3 | 1 | 23.1 | 9.1 |
| | Radio | - | - | - | 0. # |
| 232 | Station Connections— | | | | |
| | Other | - | - | - | 5.0# |
| 234 | Large Private Branch Exchanges | | | | |
| | Electronic | 6.6 | 3 | 11.1 | 13.0 |
| | Other | 4.3 | -5 | 3.1 | 23.7 |
| | DDS | 5.7 | -2 | 7.9 | 16.5 |
| 241 | Pole Lines | 28 | -50 | 29 | 4.3 |
| 242.1 | Aerial Cable | | | | |
| | Exchange | 22 | -19 | 23.8 | 4.3 |
| | Toll | 26 | 11 | 29.6 | 2.3 |
| 242.2 | Underground Cable | | | | |
| | Exchange | 40 | -9 | 9.3 | 2.5 |
| | Toll | 23 | 4 | 16.7 | 2.4* |
| 242.3 | Buried Cable | | | | |
| | Exchange | 22 | -5 | 28.9 | 3.5* |
| | Toll | 22 | -5 | 39.1 | 3.0 |
| 242.4 | Submarine Cable | | | | |
| | Exchange | 21 | -6 | 48.4 | 2.7 |
| | Toll | 24 | -6 | 55.8 | 2.1 |
| 243 | Aerial Wire | | | | |
| | Exchange | 5 | -80 | -8.1 | 37.6 |
| 244 | Underground Conduit | 63 | -5 | 8.6 | 1.5* |
| 261 | Furniture & Office Equipment | | | | |
| | Other | 19.6 | 9 | 19.4 | 3.7 |
| | Computer & AMA Equipment | 3.6 | 15 | 42.3 | 11.9 |
| 264 | Vehicles & Other Work Equipment | | | | |
| | Motor Vehicles | 5.3 | 8 | 34.3 | 10.9 |
| | Other Work Equipment | 7.9 | 0 | 34.7 | 8.3* |

*This rate was prescribed previously.

#This rate is not based upon life, salvage and reserve factors.

*FEDERAL COMMUNICATIONS COMMISSION*
*Schedule of Annual Percentages of Depreciation for*
*THE BELL TELEPHONE COMPANY OF PENNSYLVANIA*

*Effective March 1, 1982*

| *Acct. No.* | *Class or Subclass of Plant* | *Average Remaining Life* | *Future Net Salvage* | *Depr. Reserve Ratio* | *Remaining Life Rate* |
|---|---|---|---|---|---|
| | | (Years) | (%) | (%) | (%) |
| 212 | Buildings | 38 | 2 | 17.8 | 2.1* |
| 221 | Central Office Equipment | | | | |
| | Manual | 6.1 | -11 | 111 | 0. |
| | Step-by-Step | 4.5 | -6 | 38.7 | 15.0 |
| | Crossbar | 4.8 | -5 | 18.6 | 18.0 |
| | Non-Ded. Circuit | 13.1 | -5 | 17.1 | 6.7 |
| | DDS Circuit | 11.1 | -4 | 12.6 | 8.2 |
| | Radio | 14.9 | 0 | 31.5 | 4.6 |
| | Electronic | 23 | 3 | 6.8 | 3.9 |
| 231 | Station Apparatus | | | | |
| | Teletypewriter | 7 | 1 | 26.7 | 10.3 |
| | Telephone & Miscellaneous | 7.1 | 2 | 19.3 | 11.1 |
| | Radio | 3.3 | 0 | 78.3 | 6.6 |
| 232 | Station Connections—Other | - | - | - | 5.0# |
| 234 | Large Private Branch Exchanges | | | | |
| | Electronic | 6.5 | 5 | 10 | 13.1 |
| | Other | 1.8 | -3 | -9 | 62.2 |
| | DDS | 5.5 | 2 | 5.5 | 16.8 |
| 241 | Pole Lines | 32 | -61 | 35 | 3.9* |
| 242.1 | Aerial Cable | | | | |
| | Exchange—Other | 21 | -6 | 21.3 | 4.0 |
| | Exchange—House | 27 | -20 | 18.1 | 3.8 |
| | Toll | 20 | 58 | 42 | 0. |
| 242.2 | Underground Cable | | | | |
| | Exchange | 34 | 18 | 16.1 | 1.9 |
| | Toll | 25 | 56 | 35.8 | 0.3 |
| 242.3 | Buried Cable | | | | |
| | Exchange | 22 | -5 | 14.4 | 4.1 |
| | Toll | 19.7 | -4 | 47 | 2.9 |
| 242.4 | Submarine Cable | | | | |
| | Exchange | 11.6 | 0 | 100 | 0. |
| | Toll | 7.3 | 0 | 100 | 0. |
| 243 | Aerial Wire | | | | |
| | Exchange | 6.3 | -35 | -23.3 | 25.1 |
| 244 | Underground Conduit | 53 | -10 | 20.3 | 1.7* |
| 261 | Furniture & Office Equipment | 13.4 | 3 | 10.8 | 6.4 |
| | Computer Equipment | 4.6 | 9 | 25.4 | 14.3 |
| 264 | Vehicles & Other Work Equipment | | | | |
| | Motor Vehicles | 5.3 | 11 | 36.6 | 9.9 |
| | Other Work Equipment | 17.2 | 2 | 23.1 | 4.4 |

*This rate was prescribed previously.
#This rate is not based upon life, salvage and reserve factors.

*FEDERAL COMMUNICATIONS COMMISSION*

*Schedule of Annual Percentages of Depreciation for*

*CINCINNATI BELL, INCORPORATED—KENTUCKY*

*Effective June 1, 1982*

| *Acct. No.* | *Class or Subclass of Plant* | *Average Remaining Life* | *Future Net Salvage* | *Depr. Reserve Ratio* | *Remaining Life Rate* |
|---|---|---|---|---|---|
| | | (Years) | (%) | (%) | (%) |
| 212 | Buildings | 30 | 4 | 26 | 2.3* |
| 221 | Central Office Equipment | | | | |
| | Step-by-Step | 3.2 | -3 | 38.1 | 20.3 |
| | Crossbar | 1.5 | -1 | 45.1 | 22.4 |
| | Non-Ded. Circuit | 13.4 | 7 | 9.5 | 6.2 |
| | DDS Circuit | 10.4 | -4 | 15 | 8.6 |
| | Radio | 11.7 | -2 | 65.6 | 3.1 |
| | Electronic | 23 | 3 | 5.7 | 4.0 |
| 231 | Station Apparatus | | | | |
| | Teletypewriter | 6.3 | 1 | 61.1 | 6.0 |
| | Telephone & Miscellaneous | 6 | 2 | 16.6 | 13.6 |
| | Radio | 6 | 5 | 95 | 0. * |
| 232 | Station Connections—Other | - | - | - | 5.0# |
| 234 | Large Private Branch Exchanges | | | | |
| | Electronic | 6.3 | 5 | 15.9 | 12.6 |
| | DDS | 5.5 | 2 | 7.3 | 16.5* |
| | Other | 2.1 | -5 | 12.8 | 43.9 |
| 241 | Pole Lines | 20 | -21 | 36.7 | 4.2 |
| 242.1 | Aerial Cable | | | | |
| | Other Aerial | 19.4 | -5 | 29 | 3.9 |
| | House & Block | 27 | -61 | 17.1 | 5.3 |
| 242.2 | Underground Cable | 37 | -26 | 14.2 | 3.0 |
| 242.3 | Buried Cable | 31 | -5 | 11.2 | 3.0* |
| 242.4 | Submarine Cable | 12 | 0 | 100 | 0. |
| 243 | Aerial Wire | 5.8 | -34 | -25.9 | 27.6 |
| 244 | Underground Conduit | 51 | 0 | 13.4 | 1.7* |
| 261 | Furniture & Office Equipment | 24 | 8 | 38 | 2.3 |
| | Computer & AMA Systems | 8.1 | 5 | 16.9 | 9.6 |
| 264 | Vehicles & Other Work Equipment | | | | |
| | Motor Vehicles | 4.5 | 20 | 46.3 | 7.5 |
| | Other Work Equipment | 16.7 | 3 | 58.4 | 2.3 |

*This rate was prescribed previously.

#This rate is not based upon life, salvage and reserve factors.

*FEDERAL COMMUNICATIONS COMMISSION*
*Schedule of Annual Percentages of Depreciation for*
*CINCINNATI BELL, INCORPORATED—OHIO*

*Effective June 1, 1982*

| *Acct. No.* | *Class or Subclass of Plant* | *Average Remaining Life* | *Future Net Salvage* | *Depr. Reserve Ratio* | *Remaining Life Rate* |
|---|---|---|---|---|---|
| | | (Years) | (%) | (%) | (%) |
| 212 | Buildings | 41 | -1 | 15.5 | 2.1* |
| 221 | Central Office Equipment | | | | |
| | Manual | 2.9 | -5 | 93.5 | 4.0 |
| | Step-by-Step | 2.5 | -4 | 48.7 | 22.1 |
| | Crossbar | 6.4 | -3 | 33.2 | 10.9 |
| | Non-Ded. Circuit | 12.8 | 8 | 12.2 | 6.2 |
| | DDS Circuit | 10.8 | -4 | 11.1 | 8.6 |
| | Radio | 13.8 | -2 | 35.6 | 4.8 |
| | Electronic | 22 | 3 | 9.7 | 4.0 |
| 231 | Station Apparatus | | | | |
| | Teletypewriter | 6.3 | 1 | 24.6 | 11.8 |
| | Telephone & Miscellaneous | 6 | 2 | 22.4 | 12.6 |
| | Radio | 6 | 5 | 54.4 | 6.8 |
| 232 | Station Connections—Other | - | - | - | 5.0# |
| 234 | Large Private Branch Exchanges | | | | |
| | Electronic | 6.3 | 5 | 12.9 | 13.0 |
| | DDS | 5.5 | 2 | 8.9 | 16.2 |
| | Other | 2.1 | -5 | 18.8 | 41.0 |
| 241 | Pole Lines | 26 | -3 | 40.1 | 2.4 |
| 242.1 | Aerial Cable | | | | |
| | Other Aerial | 19.5 | -17 | 31.5 | 4.4 |
| | House & Block | 27 | -56 | 19.3 | 5.1 |
| 242.2 | Underground Cable | 35 | -14 | 19.1 | 2.7 |
| 242.3 | Buried Cable | 31 | -5 | 11 | 3.0* |
| 242.4 | Submarine Cable | 12 | 0 | 67.6 | 2.7 |
| 243 | Aerial Wire | 6 | -50 | 45.4 | 17.4 |
| 244 | Underground Conduit | 47 | 0 | 20.4 | 1.7* |
| 261 | Furniture & Office Equipment | 30 | 8 | 4.3 | 2.9 |
| | Computer & AMA Systems | 7 | 5 | 23.6 | 10.2 |
| 264 | Vehicles & Other Work Equipment | | | | |
| | Motor Vehicles | 4.8 | 20 | 45.1 | 7.3 |
| | Other Work Equipment | 17 | 3 | 14 | 4.9* |

*This rate was prescribed previously.
#This rate is not based upon life, salvage and reserve factors.

*FEDERAL COMMUNICATIONS COMMISSION*
*Schedule of Annual Percentages of Depreciation for*
*THE DIAMOND STATE TELEPHONE COMPANY*

*Effective March 1, 1982*

| *Acct. No.* | *Class or Subclass of Plant* | *Average Remaining Life* | *Future Net Salvage* | *Depr. Reserve Ratio* | *Remaining Life Rate* |
|---|---|---|---|---|---|
| | | (Years) | (%) | (%) | (%) |
| 212 | Buildings | 35 | 3 | 18.6 | 2.2 |
| 221 | Central Office Equipment | | | | |
| | Manual | 1.5 | -9 | -65.9 | 116.6 |
| | Step-by-Step | 3.8 | -9 | 51.3 | 15.2 |
| | Crossbar | 3.4 | -10 | 41.9 | 20.0 |
| | Non-Ded. Circuit | 10.3 | -1 | 13.2 | 8.5 |
| | DDS Circuit | 10.6 | -4 | -4.3 | 10.2 |
| | Radio | 11.7 | 0 | 37 | 5.4 |
| | Electronic | 22 | 0 | 8.4 | 4.2 |
| 231 | Station Apparatus | | | | |
| | Teletypewriter | 6.4 | -1 | 1.3 | 15.6* |
| | Telephone & Miscellaneous | 6.4 | 1 | 3.3 | 15.0 |
| | Radio | 3.5 | 0 | 58.7 | 11.8 |
| 232 | Station Connections—Other | - | - | - | 5.0# |
| 234 | Large Private Branch Exchanges | | | | |
| | Electronic | 6.9 | 5 | 9.8 | 12.3 |
| | Other | 2 | -3 | -11.4 | 57.2 |
| | DDS | 5.5 | 2 | 2.4 | 17.4 |
| 241 | Pole Lines | 30 | -88 | 54 | 4.5 |
| 242.1 | Aerial Cable | | | | |
| | Exchange—Other | 15.7 | -5 | 17.2 | 5.6 |
| | Exchange—House | 19.6 | -16 | 24.1 | 4.7 |
| | Toll | 15.2 | 68 | 32 | 0. |
| 242.2 | Underground Cable | | | | |
| | Exchange | 30 | 12 | 11.7 | 2.5 |
| | Toll | 15.8 | 28 | 61.2 | 0.7 |
| 242.3 | Buried Cable | | | | |
| | Exchange—Cable | 24 | -5 | 11.3 | 3.9 |
| | Exchange—Wire | 19.8 | -5 | 97.1 | 0.4 |
| | Toll-Cable | 15.4 | 0 | 100 | 0. |
| 242.4 | Submarine Cable | 13.1 | 0 | 50.3 | 3.8 |
| 243 | Aerial Wire | | | | |
| | Exchange | 10 | -35 | -415.6 | 55.1 |
| 244 | Underground Conduit | 57 | -15 | 14.4 | 1.8* |
| 261 | Furniture & Office Equipment | 15.3 | 5 | 16.4 | 5.1 |
| | Computer Equipment | 4.8 | 9 | 35.2 | 11.6* |
| 264 | Vehicles & Other Work Equipment | | | | |
| | Motor Vehicles | 5 | 20 | 40.8 | 7.8 |
| | Other Work Equipment | 12 | 2 | 20.9 | 6.4 |

*This rate was prescribed previously.
#This rate is not based upon life, salvage and reserve factors.

*FEDERAL COMMUNICATIONS COMMISSION*

*Schedule of Annual Percentages of Depreciation for*

*THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY—ARIZONA*

*Effective October 1, 1982*

| *Acct. No.* | *Class or Subclass of Plant* | *Average Remaining Life* | *Future Net Salvage* | *Depr. Reserve Ratio* | *Remaining Life Rate* |
|---|---|---|---|---|---|
| | | (Years) | (%) | (%) | (%) |
| 212 | Buildings | 34 | -4 | 16 | 2.6* |
| 221 | Central Office Equipment | | | | |
| | Manual | 4.5 | -7 | -829.6 | 208.1 |
| | Step-by-Step | 3 | -7 | 40.5 | 22.2 |
| | Crossbar | 7 | -2 | 1.6 | 14.3 |
| | Non-Ded. Circuit | 12.2 | -2 | 23.2 | 6.5 |
| | DDS Circuit | 10.8 | -4 | 8.1 | 8.9 |
| | Radio | 10.5 | -3 | 50 | 5.0 |
| | Electronic | 19.9 | 4 | 6.2 | 4.5 |
| 231 | Station Apparatus | | | | |
| | Teletypewriter | 5.8 | 0 | 19.4 | 13.9 |
| | Telephone & Miscellaneous | 6.8 | 4 | 16.3 | 11.7 |
| | Radio | 6.6 | -1 | 59 | 6.4 |
| 232 | Station Connections—Other | - | - | - | 5.0# |
| 234 | Large Private Branch Exchanges | | | | |
| | Electronic | 6 | 5 | 10.5 | 14.1 |
| | Other | 3 | -3 | 0.7 | 34.1 |
| | DDS | 5.5 | 2 | 6 | 16.7 |
| 241 | Pole Lines | 21 | -22 | 54.6 | 3.2 |
| 242.1 | Aerial Cable | | | | |
| | Exchange—Other | 17.8 | -7 | 23.8 | 4.7 |
| | Exchange—Building | 22 | -17 | 67.9 | 2.2 |
| | Toll | 10.8 | 27 | -19 | 8.5 |
| 242.2 | Underground Cable | | | | |
| | Exchange | 32 | 16 | 12.5 | 2.2 |
| | Toll | 19.9 | 14 | 16.8 | 3.5 |
| 242.3 | Buried Cable | | | | |
| | Exchange | 28 | -3 | 14.8 | 3.2 |
| | Toll | 28 | 6 | 23 | 2.5 |
| 242.4 | Submarine Cable | | | | |
| | Exchange | 25 | 0 | 32.4 | 2.7 |
| | Toll | 24 | 0 | 64.8 | 1.5 |
| 243 | Aerial Wire | | | | |
| | Exchange | 9.8 | -22 | 57.2 | 6.6 |
| | Toll | 6.3 | 3 | -39.1 | 21.6 |
| 244 | Underground Conduit | 56 | -7 | 13.6 | 1.7 |
| 261 | Furniture & Office Equipment | 20 | 1 | 15.4 | 4.2* |
| | Computer & AMA Systems | 4.8 | 2 | 36.5 | 12.8 |
| 264 | Vehicles & Other Work Equipment | | | | |
| | Motor Vehicles | 6.3 | 18 | 44.6 | 5.9 |
| | Other Work Equipment | 16.2 | 7 | 21 | 4.4 |

*This rate was prescribed previously.

#This rate is not based upon life, salvage and reserve factors.

*FEDERAL COMMUNICATIONS COMMISSION*

*Schedule of Annual Percentages of Depreciation for*

*THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY—COLORADO*

*Effective October 1, 1982*

| *Acct. No.* | *Class or Subclass of Plant* | *Average Remaining Life* | *Future Net Salvage* | *Depr. Reserve Ratio* | *Remaining Life Rate* |
|---|---|---|---|---|---|
| | | (Years) | (%) | (%) | (%) |
| 212 | Buildings | 35 | -2 | 15.6 | 2.5* |
| 221 | Central Office Equipment | | | | |
| | Manual | 4.2 | -11 | 24.7 | 20.5 |
| | Step-by-Step | 5.3 | -10 | 39.4 | 13.3 |
| | Crossbar | 6.6 | -4 | 12.8 | 13.8 |
| | Non-Ded. Circuit | 12.6 | -3 | 21.4 | 6.5* |
| | DDS Circuit | 11.4 | -4 | 8.7 | 8.4 |
| | Radio | 14.3 | -4 | 35.4 | 4.8 |
| | Electronic | 25 | 4 | 9.1 | 3.5 |
| 231 | Station Apparatus | | | | |
| | Teletypewriter | 7.4 | 0 | 22.6 | 10.5* |
| | Telephone & Miscellaneous | 7.4 | 2 | 13.1 | 11.5 |
| | Radio | 7 | 1 | 24.9 | 10.6 |
| | Station Connections— | | | | |
| 232 | Other | - | - | - | 5.0# |
| | Large Private Branch | | | | |
| 234 | Exchanges | | | | |
| | Electronic | 6.1 | 5 | 8.4 | 14.2* |
| | Other | 3 | -3 | 34.6 | 22.8 |
| | DDS | 5.5 | 2 | 6.8 | 16.6 |
| 241 | Pole Lines | 12.8 | -44 | 34.7 | 8.5 |
| 242.1 | Aerial Cable | | | | |
| | Exchange—Other | 19.9 | -6 | 25.1 | 4.1 |
| | Exchange—Building | 23 | -15 | 21.5 | 4.1 |
| | Toll | 12.6 | 24 | 17.2 | 4.7 |
| 242.2 | Underground Cable | | | | |
| | Exchange | 34 | 21 | 12.7 | 2.0 |
| | Toll | 23 | 23 | 22.6 | 2.4 |
| 242.3 | Buried Cable | | | | |
| | Exchange | 29 | -3 | 12.5 | 3.1 |
| | Toll | 28 | 10 | 20.7 | 2.5* |
| 242.4 | Submarine Cable | | | | |
| | Exchange | 22 | 0 | 39.9 | 2.7 |
| | Toll | 22 | 0 | 49.7 | 2.3 |
| 243 | Aerial Wire | | | | |
| | Exchange | 11.5 | -30 | -7.4 | 11.9 |
| | Toll | 6.1 | -10 | -43.4 | 25.1 |
| 244 | Underground Conduit | 58 | -7 | 12.1 | 1.6* |
| 261 | Furniture & Office Equipment | 22 | 1 | 10.5 | 4.0 |
| | Computer & AMA Systems | 3.9 | 2 | 42.4 | 14.3 |
| 264 | Vehicles & Other Work Equipment | | | | |
| | Motor Vehicles | 4.3 | 15 | 40 | 10.5 |
| | Other Work Equipment | 10.6 | 29 | 33.4 | 3.5 |

*This rate was prescribed previously.

#This rate is not based upon life, salvage and reserve factors.

*FEDERAL COMMUNICATIONS COMMISSION*

*Schedule of Annual Percentages of Depreciation for*

*THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY—IDAHO*

*Effective October 1, 1982*

| *Acct. No.* | *Class or Subclass of Plant* | *Average Remaining Life* | *Future Net Salvage* | *Depr. Reserve Ratio* | *Remaining Life Rate* |
|---|---|---|---|---|---|
| | | (Years) | (%) | (%) | (%) |
| 212 | Buildings | 34 | -1 | 18 | 2.4 |
| 221 | Central Office Equipment | | | | |
| | Manual | 1.5 | -7 | 36.7 | 46.9 |
| | Step-by-Step | 8.9 | -7 | 14.1 | 10.4 |
| | Crossbar | 5.3 | -7 | 26.1 | 15.3 |
| | Non-Ded. Circuit | 13.3 | 1 | 22.6 | 5.7 |
| | DDS Circuit | 11 | -4 | 0 | 9.5 |
| | Radio | 10.6 | -5 | 42.8 | 5.9 |
| | Electronic | 24 | 3 | 6.2 | 3.8 |
| 231 | Station Apparatus | | | | |
| | Teletypewriter | 5.6 | -1 | 14.3 | 15.5 |
| | Telephone & Miscellaneous | 7.5 | 1 | 15.8 | 11.1 |
| | Radio | 6.5 | 0 | 36.5 | 9.8 |
| 232 | Station Connections—Other | - | - | - | 5.0# |
| 234 | Large Private Branch Exchanges | | | | |
| | Electronic | 5.4 | 5 | 7.3 | 16.2 |
| | Other | 4.8 | -3 | -9.9 | 23.5 |
| | DDS | 5.5 | 2 | 0 | 17.8 |
| 241 | Pole Lines | 15.5 | -37 | 40 | 6.3 |
| 242.1 | Aerial Cable | | | | |
| | Exchange—Other | 23 | -4 | 25.3 | 3.4 |
| | Exchange—Building | 25 | -7 | 19.5 | 3.5* |
| | Toll | 16.9 | 14 | -7.4 | 5.5 |
| 242.2 | Underground Cable | | | | |
| | Exchange | 35 | 8 | 7.9 | 2.4 |
| | Toll | 29 | 9 | 9.1 | 2.8 |
| 242.3 | Buried Cable | | | | |
| | Exchange | 30 | -1 | 14.4 | 2.9 |
| | Toll | 28 | 0 | 27 | 2.6* |
| 242.4 | Submarine Cable | | | | |
| | Exchange | 26 | 0 | 24.6 | 2.9 |
| | Toll | 17.8 | 0 | 6.2 | 6.0 |
| 243 | Aerial Wire | | | | |
| | Exchange | 9.3 | -31 | -48 | 19.2 |
| | Toll | 4.3 | 17 | 7.6 | 17.5 |
| 244 | Underground Conduit | 59 | -7 | 11.3 | 1.6* |
| 261 | Furniture & Office Equipment | 19.1 | 4 | 20.8 | 3.9 |
| | Computer & AMA Systems | 4.4 | 2 | 53.5 | 10.1 |
| 264 | Vehicles & Other Work Equipment | | | | |
| | Motor Vehicles | 5.4 | 15 | 51.2 | 6.3 |
| | Other Work Equipment | 13.1 | 8 | 32.1 | 4.6 |

*This rate was prescribed previously.

#This rate is not based upon life, salvage and reserve factors.

*FEDERAL COMMUNICATIONS COMMISSION*

*Schedule of Annual Percentages of Depreciation for*

*THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY—MONTANA*

*Effective October 1, 1982*

| *Acct. No.* | *Class or Subclass of Plant* | *Average Remaining Life* | *Future Net Salvage* | *Depr. Reserve Ratio* | *Remaining Life Rate* |
|---|---|---|---|---|---|
| | | (Years) | (%) | (%) | (%) |
| 212 | Buildings | 35 | -2 | 16.3 | 2.4* |
| 221 | Central Office Equipment | | | | |
| | Manual | 1.1 | -7 | 78.8 | 25.6 |
| | Step-by-Step | 7.3 | -6 | 38.3 | 9.3 |
| | Crossbar | 9.2 | -6 | 25 | 8.8 |
| | Non-Ded. Circuit | 12.4 | 2 | 25.5 | 5.8 |
| | DDS Circuit | 11 | -4 | 0 | 9.5 |
| | Radio | 13.3 | -9 | 48.4 | 4.6 |
| | Electronic | 26 | 5 | 8.8 | 3.3 |
| 231 | Station Apparatus | | | | |
| | Teletypewriter | 5.1 | -2 | 20.1 | 16.1 |
| | Telephone & Miscellaneous | 8 | 1 | 18.4 | 10.1 |
| | Radio | 6.4 | -1 | 13.8 | 13.6 |
| 232 | Station Connections—Other | - | - | - | 5.0# |
| 234 | Large Private Branch Exchanges | | | | |
| | Electronic | 5.8 | 5 | 13.3 | 14.1 |
| | Other | 3.5 | -5 | 32.1 | 20.8 |
| | DDS | 5.5 | 2 | 0 | 17.8 |
| 241 | Pole Lines | 14.9 | -48 | 38.6 | 7.3 |
| 242.1 | Aerial Cable | | | | |
| | Exchange—Other | 18.5 | -4 | 21.2 | 4.5 |
| | Exchange—Building | 22 | -11 | 17.1 | 4.3 |
| | Toll | 14 | 14 | 17.5 | 4.9 |
| 242.2 | Underground Cable | | | | |
| | Exchange | 33 | 11 | 15.3 | 2.2 |
| | Toll | 23 | -3 | 10.4 | 4.0 |
| 242.3 | Buried Cable | | | | |
| | Exchange | 28 | 4 | 12.8 | 3.0 |
| | Toll | 29 | 14 | 9.9 | 2.6 |
| 242.4 | Submarine Cable | | | | |
| | Exchange | 24 | 0 | 43.7 | 2.3 |
| | Toll | 19.8 | 0 | 44.1 | 2.8* |
| 243 | Aerial Wire | | | | |
| | Exchange | 8.8 | -4 | 13.3 | 10.3 |
| | Toll | 4.4 | -6 | -39.9 | 15.0 |
| 244 | Underground Conduit | 53 | -7 | 15.8 | 1.7 |
| 261 | Furniture & Office Equipment | 18.5 | 3 | 19.8 | 4.2 |
| | Computer & AMA Systems | 3.7 | 2 | 41.2 | 15.4 |
| 264 | Vehicles & Other Work Equipment | | | | |
| | Motor Vehicles | 5 | 15 | 48.2 | 7.4 |
| | Other Work Equipment | 16 | 26 | 30.9 | 2.7 |

*This rate was prescribed previously.

#This rate is not based upon life, salvage and reserve factors.

*FEDERAL COMMUNICATIONS COMMISSION*
*Schedule of Annual Percentages of Depreciation for*
*THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY—NEW MEXICO*

*Effective October 1, 1982*

| *Acct. No.* | *Class or Subclass of Plant* | *Average Remaining Life* | *Future Net Salvage* | *Depr. Reserve Ratio* | *Remaining Life Rate* |
|---|---|---|---|---|---|
| | | (Years) | (%) | (%) | (%) |
| 212 | Buildings | 35 | -2 | 10.9 | 2.6* |
| 221 | Central Office Equipment | | | | |
| | Manual | 2 | -8 | 2.3 | 52.9 |
| | Step-by-Step | 6.3 | -2 | 30.9 | 11.3 |
| | Crossbar | 5.3 | -1 | -15.6 | 22.0 |
| | Non-Ded. Circuit | 14.5 | 5 | 20.5 | 5.1 |
| | DDS Circuit | 9.6 | -4 | -5.4 | 11.4 |
| | Radio | 12.4 | -4 | 40.8 | 5.1 |
| | Electronic | 26 | 5 | 8.5 | 3.3 |
| 231 | Station Apparatus | | | | |
| | Teletypewriter | 5.4 | -2 | 17.2 | 15.7 |
| | Telephone & Miscellaneous | 7.7 | 2 | 10.9 | 11.3 |
| | Radio | 6.4 | -2 | 66.7 | 5.5 |
| 232 | Station Connections—Other | - | - | - | 5.0# |
| 234 | Large Private Branch Exchanges | | | | |
| | Electronic | 7.2 | 5 | 9 | 11.9 |
| | Other | 4 | -1 | 21.6 | 19.9 |
| | DDS | 5.5 | 2 | 3.1 | 17.3 |
| 241 | Pole Lines | 19.6 | -29 | 47.4 | 4.2 |
| 242.1 | Aerial Cable | | | | |
| | Exchange—Other | 23 | -3 | 29.3 | 3.2* |
| | Exchange—Building | 27 | -8 | 13.5 | 3.5 |
| | Toll | 18.4 | 20 | -4.1 | 4.6 |
| 242.2 | Underground Cable | | | | |
| | Exchange | 37 | 15 | 11.1 | 2.0 |
| | Toll | 26 | 12 | 4.9 | 3.2 |
| 242.3 | Buried Cable | | | | |
| | Exchange | 31 | -6 | 13.2 | 3.0 |
| | Toll | 31 | 5 | 16 | 2.5 |
| 242.4 | Submarine Cable | | | | |
| | Exchange | 36 | 0 | 0 | 2.8* |
| | Toll | 15.2 | 0 | 46.5 | 3.5 |
| 243 | Aerial Wire | | | | |
| | Exchange | 12 | 14 | 65.5 | 1.7 |
| | Toll | 5.7 | 9 | -74.6 | 29.1 |
| 244 | Underground Conduit | 56 | -7 | 13.7 | 1.7 |
| 261 | Furniture & Office Equipment | 20 | 1 | 12.9 | 4.3 |
| | Computer & AMA Systems | 6.1 | 2 | 22.9 | 12.3 |
| 264 | Vehicles & Other Work Equipment | | | | |
| | Motor Vehicles | 6.1 | 11 | 45 | 7.2 |
| | Other Work Equipment | 14.2 | 14 | 21.3 | 4.6 |

*This rate was prescribed previously.
#This rate is not based upon life, salvage and reserve factors.

## *FEDERAL COMMUNICATIONS COMMISSION*

*Schedule of Annual Percentages of Depreciation for*

## *THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY—UTAH*

*Effective October 1, 1982*

| *Acct. No.* | *Class or Subclass of Plant* | *Average Remaining Life* | *Future Net Salvage* | *Depr. Reserve Ratio* | *Remaining Life Rate* |
|---|---|---|---|---|---|
| | | (Years) | (%) | (%) | (%) |
| 212 | Buildings | 39 | -2 | 10.7 | 2.3 |
| 221 | Central Office Equipment | | | | |
| | Manual | 3.6 | -13 | -44.9 | 43.9 |
| | Step-by-Step | 4.6 | -5 | 39.9 | 14.2 |
| | Crossbar | 5.4 | 0 | 24.2 | 14.0 |
| | Non-Ded. Circuit | 14.9 | 0 | 20.5 | 5.3 |
| | DDS Circuit | 11.5 | -4 | 12.1 | 8.0 |
| | Radio | 13.3 | -5 | 46.5 | 4.4 |
| | Electronic | 23 | 6 | 8.5 | 3.7 |
| 231 | Station Apparatus | | | | |
| | Teletypewriter | 4.3 | 1 | 10.8 | 20.5 |
| | Telephone & Miscellaneous | 7.1 | 2 | 11.9 | 12.1 |
| | Radio | 6.3 | -2 | 21.7 | 12.7 |
| 232 | Station Connections—Other | - | - | - | 5.0# |
| 234 | Large Private Branch Exchanges | | | | |
| | Electronic | 6.8 | 5 | 8.8 | 12.7 |
| | Other | 2.3 | -3 | -9.1 | 48.7 |
| | DDS | 5.5 | 2 | 11 | 15.8 |
| 241 | Pole Lines | 26 | -40 | 48.8 | 3.5 |
| 242.1 | Aerial Cable | | | | |
| | Exchange—Other | 21 | 0 | 31 | 3.3* |
| | Exchange—Building | 25 | -17 | 17.1 | 4.0 |
| | Toll | 15.7 | 41 | 32.4 | 1.7 |
| 242.2 | Underground Cable | | | | |
| | Exchange | 36 | 26 | 13.8 | 1.7 |
| | Toll | 27 | 30 | 22 | 1.8* |
| 242.3 | Buried Cable | | | | |
| | Exchange | 31 | 1 | 14.5 | 2.7 |
| | Toll | 27 | 1 | 29.7 | 2.6 |
| 242.4 | Submarine Cable | | | | |
| | Exchange | 30 | 0 | 0 | 3.3* |
| | Toll | 30 | 0 | 0 | 3.3* |
| 243 | Aerial Wire | | | | |
| | Exchange | 10.6 | 13 | 81.5 | 0.5 |
| | Toll | 6.2 | 46 | 43.3 | 1.7 |
| 244 | Underground Conduit | 56 | -7 | 16.4 | 1.6* |
| 261 | Furniture & Office Equipment | 21 | 2 | 6.5 | 4.4 |
| | Computer & AMA Systems | 5.1 | 2 | 33.2 | 12.7 |
| 264 | Vehicles & Other Work Equipment | | | | |
| | Motor Vehicles | 5 | 22 | 41.4 | 7.3 |
| | Other Work Equipment | 14.7 | 17 | 17 | 4.5 |

*This rate was prescribed previously.

#This rate is not based upon life, salvage and reserve factors.

*FEDERAL COMMUNICATIONS COMMISSION*
*Schedule of Annual Percentages of Depreciation for*
*THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY—WYOMING*

*Effective October 1, 1982*

| *Acct. No.* | *Class or Subclass of Plant* | *Average Remaining Life* | *Future Net Salvage* | *Depr. Reserve Ratio* | *Remaining Life Rate* |
|---|---|---|---|---|---|
| | | (Years) | (%) | (%) | (%) |
| 212 | Buildings | 36 | -1 | 11.8 | 2.5* |
| 221 | Central Office Equipment | | | | |
| | Step-by-Step | 7.8 | -4 | 14.4 | 11.5 |
| | Crossbar | 6.2 | 1 | -8.2 | 17.3 |
| | Non-Ded. Circuit | 15.2 | 5 | 14.7 | 5.3 |
| | DDS Circuit | 11 | -4 | 0 | 9.5 |
| | Radio | 13.6 | -7 | 42.5 | 4.7 |
| | Electronic | 23 | 5 | 3.6 | 4.0 |
| 231 | Station Apparatus | | | | |
| | Teletypewriter | 4.5 | 1 | 8.7 | 20.5 |
| | Telephone & Miscellaneous | 8.1 | 3 | 17 | 9.9 |
| | Radio | 5.9 | 0 | 0 | 16.9 |
| 232 | Station Connections—Other | - | - | - | 5.0# |
| 234 | Large Private Branch Exchanges | | | | |
| | Electronic | 7.1 | 5 | 9.1 | 12.1 |
| | Other | 4 | -2 | 14.2 | 22.0 |
| | DDS | 5.5 | 2 | 0 | 17.8 |
| 241 | Pole Lines | 6 | -35 | 7.7 | 21.2 |
| 242.1 | Aerial Cable | | | | |
| | Exchange—Other | 15.4 | -6 | 8.4 | 6.3 |
| | Exchange—Building | 17.9 | -5 | 15.6 | 5.0 |
| | Toll | 11.6 | 33 | -40.5 | 9.3 |
| 242.2 | Underground Cable | | | | |
| | Exchange | 41 | -9 | 6.4 | 2.5 |
| | Toll | 28 | 30 | -2.8 | 2.6 |
| 242.3 | Buried Cable | | | | |
| | Exchange | 31 | -4 | 10.6 | 3.0 |
| | Toll | 26 | 5 | 55.8 | 1.5 |
| 242.4 | Submarine Cable | | | | |
| | Exchange | 23 | 0 | 36.4 | 2.8 |
| | Toll | 30 | 0 | 0 | 3.3* |
| 243 | Aerial Wire | | | | |
| | Exchange | 7.4 | -1 | -119.3 | 29.5 |
| | Toll | 6.2 | 49 | 49.5 | 0.2 |
| 244 | Underground Conduit | 61 | -7 | 7.8 | 1.6* |
| 261 | Furniture & Office Equipment | 23 | 1 | 16.3 | 3.6 |
| | Computer & AMA Systems | 3.5 | 2 | 53.1 | 12.8 |
| 264 | Vehicles & Other Work Equipment | | | | |
| | Motor Vehicles | 5.3 | 15 | 31.4 | 10.1 |
| | Other Work Equipment | 14.6 | 15 | 14.5 | 4.8* |

*This rate was prescribed previously.
#This rate is not based upon life, salvage and reserve factors.

*FEDERAL COMMUNICATIONS COMMISSION*
*Schedule of Annual Percentages of Depreciation for*
*NEW ENGLAND TELEPHONE AND TELEGRAPH COMPANY—MAINE*

*Effective July 1, 1982*

| *Acct. No.* | *Class or Subclass of Plant* | *Average Remaining Life* | *Future Net Salvage* | *Depr. Reserve Ratio* | *Remaining Life Rate* |
|---|---|---|---|---|---|
| | | (Years) | (%) | (%) | (%) |
| 212 | Buildings | 32 | 4 | 24.1 | 2.2* |
| 221 | Central Office Equipment | | | | |
| | Step-by-Step | 4.9 | -5 | 48.5 | 11.5 |
| | Crossbar | 6.4 | -4 | 33 | 11.1 |
| | Non-Ded. Circuit | 13.9 | 0 | 32 | 4.9 |
| | DDS Circuit | 10.3 | -4 | 0.4 | 10.1 |
| | Radio | 13.2 | -5 | 35.3 | 5.3 |
| | Electronic | 25 | 0 | 7.5 | 3.7 |
| 231 | Station Apparatus | | | | |
| | Teletypewriter | 7 | 9 | 27.8 | 9.0* |
| | Telephone & Miscellaneous | 9.5 | 1 | 39.2 | 6.3 |
| | Radio | 5.2 | 0 | 70.4 | 5.7 |
| 232 | Station Connections—Other | - | - | - | 5.0# |
| 234 | Large Private Branch Exchanges | | | | |
| | Electronic | 6.6 | 4 | 12.5 | 12.7 |
| | Other | 4.3 | -2 | 6.5 | 22.2 |
| | DDS | 5 | 2 | 72.5 | 5.1 |
| 241 | Pole Lines | 27 | -60 | 37.2 | 4.5 |
| 242.1 | Aerial Cable | | | | |
| | Exchange | 27 | -20 | 23.9 | 3.6 |
| | Toll | 24 | 36 | 42.1 | 0.9 |
| 242.2 | Underground Cable | | | | |
| | Exchange | 39 | -14 | 14.8 | 2.5 |
| | Toll | 32 | 18 | 22.7 | 1.9 |
| 242.3 | Buried Cable | | | | |
| | Exchange | 22 | -5 | 31 | 3.4 |
| | Toll | 23 | -5 | 40.3 | 2.8 |
| 242.4 | Submarine Cable | | | | |
| | Exchange | 15.1 | -6 | 71.4 | 2.3 |
| | Toll | 17.9 | -10 | 49.5 | 3.4 |
| 243 | Aerial Wire | | | | |
| | Exchange | 4.5 | -42 | 1.1 | 31.3 |
| 244 | Underground Conduit | 62 | -4 | 10.3 | 1.5* |
| 261 | Furniture & Office Equipment | | | | |
| | Other | 18.1 | 11 | 26.2 | 3.5 |
| | Computer & AMA Equipment | 3 | 22 | 69.8 | 2.7 |
| 264 | Vehicles & Other Work Equipment | | | | |
| | Motor Vehicles | 5.1 | 6 | 24.3 | 13.7 |
| | Other Work Equipment | 7.8 | -1 | 30.7 | 9.0 |

*This rate was prescribed previously.
#This rate is not based upon life, salvage and reserve factors.

*FEDERAL COMMUNICATIONS COMMISSION*
*Schedule of Annual Percentages of Depreciation for*
*NEW ENGLAND TELEPHONE AND TELEGRAPH COMPANY—*
*MASSACHUSETTS*

*Effective July 1, 1982*

| *Acct. No.* | *Class or Subclass of Plant* | *Average Remaining Life* | *Future Net Salvage* | *Depr. Reserve Ratio* | *Remaining Life Rate* |
|---|---|---|---|---|---|
| | | (Years) | (%) | (%) | (%) |
| 212 | Buildings | 30 | -5 | 27.8 | 2.2 |
| 221 | Central Office Equipment | | | | |
| | Manual | 3.5 | -11 | -44.7 | 44.5 |
| | Step-by-Step | 5.1 | -4 | 52.1 | 10.2 |
| | Crossbar | 5.5 | -2 | 38.6 | 11.5 |
| | Non-Ded. Circuit | 13.5 | 0 | 31.7 | 5.1 |
| | DDS Circuit | 12.6 | -3 | 33.7 | 5.5 |
| | Radio | 9.6 | -1 | 46.2 | 5.7 |
| | Electronic | 25 | 0 | 10.1 | 3.6 |
| 231 | Station Apparatus | | | | |
| | Teletypewriter | 6.9 | 9 | 29.4 | 8.9 |
| | Telephone & Miscellaneous | 6.9 | 1 | 20.2 | 11.4 |
| | Radio | 4.8 | 2 | 79.1 | 3.9 |
| | Station Connections— | | | | |
| 232 | Other | - | - | - | 5.0# |
| | Large Private Branch | | | | |
| 234 | Exchanges | | | | |
| | Electronic | 7.2 | 4 | 8.7 | 12.1 |
| | Other | 4.3 | -5 | 1.7 | 24.0 |
| | DDS | 6.5 | -1 | -3.1 | 16.0 |
| 241 | Pole Lines | 31 | -60 | 45 | 3.7 |
| 242.1 | Aerial Cable | | | | |
| | Exchange | 21 | -21 | 34.2 | 4.1 |
| | Toll | 24 | 40 | 36.8 | 1.0 |
| 242.2 | Underground Cable | | | | |
| | Exchange | 46 | 29 | 20.7 | 1.1 |
| | Toll | 30 | 21 | 26.4 | 1.8 |
| 242.3 | Buried Cable | | | | |
| | Exchange | 27 | -6 | 28.8 | 2.9 |
| | Toll | 23 | -5 | 41.7 | 2.8 |
| 242.4 | Submarine Cable | | | | |
| | Exchange | 15.6 | -16 | 91 | 1.6 |
| | Toll | 17.5 | -15 | 89.5 | 1.5 |
| 243 | Aerial Wire | | | | |
| | Exchange | 5.4 | -49 | -16.6 | 30.7 |
| 244 | Underground Conduit | 58 | -4 | 18.4 | 1.5* |
| | Furniture & Office | | | | |
| 261 | Equipment | | | | |
| | Other | 18 | 14 | 20.8 | 3.6 |
| | Computer & AMA Equipment | 4.2 | 19 | 37.3 | 10.4 |
| | Vehicles & Other Work | | | | |
| 264 | Equipment | | | | |
| | Motor Vehicles | 4.7 | 6 | 52.5 | 8.8 |
| | Other Work Equipment | 7.3 | -2 | 32.4 | 9.5 |

*This rate was prescribed previously.
#This rate is not based upon life, salvage and reserve factors.

*FEDERAL COMMUNICATIONS COMMISSION*
*Schedule of Annual Percentages of Depreciation for*
*NEW ENGLAND TELEPHONE AND TELEGRAPH COMPANY—*
*NEW HAMPSHIRE*

*Effective January 1, 1982*

| *Acct. No.* | *Class or Subclass of Plant* | *Average Remaining Life* | *Future Net Salvage* | *Depr. Reserve Ratio* | *Remaining Life Rate* |
|---|---|---|---|---|---|
| | | (Years) | (%) | (%) | (%) |
| 212 | Buildings | 35 | 2 | 18.3 | 2.3* |
| 221 | Central Office Equipment | | | | |
| | Step-by-Step | 5.6 | -5 | 39.2 | 11.8 |
| | Crossbar | 6.3 | -4 | 31.9 | 11.4 |
| | Non-Ded. Circuit | 14.3 | -1 | 28.8 | 5.0 |
| | DDS Circuit | 10 | -4 | 8.7 | 9.5 |
| | Radio | 9.1 | -5 | 40.3 | 7.1 |
| | Electronic | 25 | 0 | 8 | 3.7 |
| 231 | Station Apparatus | | | | |
| | Teletypewriter | 5.8 | 10 | 19.9 | 12.1 |
| | Telephone & Miscellaneous | 8.3 | 1 | 23.1 | 9.1 |
| | Radio | - | - | - | 0. # |
| 232 | Station Connections— Other | - | - | - | 5.0# |
| 234 | Large Private Branch Exchanges | | | | |
| | Electronic | 6.6 | 3 | 11.1 | 13.0 |
| | Other | 4.3 | -5 | 3.1 | 23.7 |
| | DDS | 5.7 | -2 | 7.9 | 16.5 |
| 241 | Pole Lines | 28 | -50 | 29 | 4.3 |
| 242.1 | Aerial Cable | | | | |
| | Exchange | 22 | -19 | 23.8 | 4.3 |
| | Toll | 26 | 11 | 29.6 | 2.3 |
| 242.2 | Underground Cable | | | | |
| | Exchange | 40 | -9 | 9.3 | 2.5 |
| | Toll | 33 | 4 | 16.7 | 2.4* |
| 242.3 | Buried Cable | | | | |
| | Exchange | 22 | -5 | 28.9 | 3.5* |
| | Toll | 22 | -5 | 39.1 | 3.0 |
| 242.4 | Submarine Cable | | | | |
| | Exchange | 21 | -6 | 48.4 | 2.7 |
| | Toll | 24 | -6 | 55.8 | 2.1 |
| 243 | Aerial Wire | | | | |
| | Exchange | 5 | -80 | -8.1 | 37.6 |
| 244 | Underground Conduit | 63 | -5 | 8.6 | 1.5* |
| 261 | Furniture & Office Equipment | | | | |
| | Other | 19.6 | 9 | 19.4 | 3.7 |
| | Computer & AMA Equipment | 3.6 | 15 | 42.3 | 11.9 |
| 264 | Vehicles & Other Work Equipment | | | | |
| | Motor Vehicles | 5.3 | 8 | 34.3 | 10.9 |
| | Other Work Equipment | 7.9 | 0 | 34.7 | 8.3* |

*This rate was prescribed previously.
#This rate is not based upon life, salvage and reserve factors.

*FEDERAL COMMUNICATIONS COMMISSION*
*Schedule of Annual Percentages of Depreciation for*
*NEW ENGLAND TELEPHONE AND TELEGRAPH COMPANY—*
*RHODE ISLAND*

*Effective July 1, 1982*

| *Acct. No.* | *Class or Subclass of Plant* | *Average Remaining Life* | *Future Net Salvage* | *Depr. Reserve Ratio* | *Remaining Life Rate* |
|---|---|---|---|---|---|
| | | (Years) | (%) | (%) | (%) |
| 212 | Buildings | 33 | 3 | 28.5 | 2.1 |
| 221 | Central Office Equipment | | | | |
| | Step-by-Step | 3.8 | 5 | 58.1 | 9.7 |
| | Crossbar | 6.7 | -4 | 44.4 | 8.9 |
| | Non-Ded. Circuit | 13.5 | -1 | 33.3 | 5.0 |
| | DDS Circuit | 10.4 | -4 | 9.5 | 9.1 |
| | Radio | 9.2 | -10 | 80.3 | 3.2 |
| | Electronic | 26 | -3 | 9.3 | 3.6* |
| 231 | Station Apparatus | | | | |
| | Teletypewriter | 6 | 11 | 39.5 | 8.3 |
| | Telephone & Miscellaneous | 9.7 | 1 | 37.7 | 6.3 |
| | Radio | - | - | - | 0. # |
| 232 | Station Connections— | | | | |
| | Other | - | - | - | 5.0# |
| 234 | Large Private Branch Exchanges | | | | |
| | Electronic | 6.8 | 4 | 13.7 | 12.1 |
| | Other | 5.1 | -6 | 18.9 | 17.1 |
| | DDS | 5.1 | 2 | 48 | 9.8 |
| 241 | Pole Lines | 31 | -58 | 48.2 | 3.5 |
| 242.1 | Aerial Cable | | | | |
| | Exchange | 25 | -22 | 36.7 | 3.4 |
| | Toll | 25 | 25 | 50.3 | 1.0 |
| 242.2 | Underground Cable | | | | |
| | Exchange | 37 | 6 | 22.3 | 1.9 |
| | Toll | 28 | 31 | 37.8 | 1.1 |
| 242.3 | Buried Cable | | | | |
| | Exchange | 21 | -5 | 35.5 | 3.3 |
| | Toll | 23 | -5 | 47.6 | 2.5 |
| 242.4 | Submarine Cable | | | | |
| | Exchange | 15.2 | -5 | 96.5 | 0.6 |
| | Toll | 18.2 | -6 | 82.1 | 1.3 |
| 243 | Aerial Wire | | | | |
| | Exchange | 5.3 | -70 | 30.2 | 26.4 |
| 244 | Underground Conduit | 56 | -5 | 22.9 | 1.5* |
| 261 | Furniture & Office Equipment | | | | |
| | Other | 18.3 | 9 | 37.6 | 2.9 |
| | Computer & AMA Equipment | 3.7 | 26 | 35.4 | 10.4 |
| 264 | Vehicles & Other Work Equipment | | | | |
| | Motor Vehicles | 4.7 | 7 | 50.4 | 9.1 |
| | Other Work Equipment | 8.1 | -2 | 27.9 | 9.1 |

*This rate was prescribed previously.
#This rate is not based upon life, salvage and reserve factors.

*FEDERAL COMMUNICATIONS COMMISSION*
*Schedule of Annual Percentages of Depreciation for*
*NEW ENGLAND TELEPHONE AND TELEGRAPH COMPANY—VERMONT*

*Effective January 1, 1982*

| *Acct. No.* | *Class or Subclass of Plant* | *Average Remaining Life* | *Future Net Salvage* | *Depr. Reserve Ratio* | *Remaining Life Rate* |
|---|---|---|---|---|---|
| | | (Years) | (%) | (%) | (%) |
| 212 | Buildings | 32 | 8 | 19.1 | 2.3 |
| 221 | Central Office Equipment | | | | |
| | Step-by-Step | 5.5 | -5 | 38.5 | 12.1 |
| | Crossbar | 10.1 | -5 | -40.8 | 14.4 |
| | Non-Ded. Circuit | 13.9 | 0 | 29.1 | 5.1 |
| | DDS Circuit | 10.6 | -4 | -1.6 | 10.0 |
| | Radio | 10.7 | -5 | 52 | 5.0 |
| | Electronic | 26 | 0 | 6.1 | 3.6* |
| 231 | Station Apparatus | | | | |
| | Teletypewriter | 6.6 | 11 | 14.2 | 11.3 |
| | Telephone & Miscellaneous | 9.6 | 1 | 37.6 | 6.4 |
| | Radio | - | - | - | 0. # |
| 232 | Station Connections— | | | | |
| | Other | - | - | - | 5.0# |
| 234 | Large Private Branch Exchanges | | | | |
| | Electronic | 6.5 | 5 | 13.2 | 12.6 |
| | Other | 4.3 | -7 | 6 | 23.5 |
| | DDS | 5 | 2 | 3.1 | 19.0 |
| 241 | Pole Lines | 25 | -50 | 27.6 | 4.9 |
| 242.1 | Aerial Cable | | | | |
| | Exchange | 25 | -21 | 21.1 | 4.0 |
| | Toll | 26 | 11 | 39.2 | 1.9 |
| 242.2 | Underground Cable | | | | |
| | Exchange | 38 | -4 | 15.7 | 2.3* |
| | Toll | 32 | 0 | 33.5 | 2.1 |
| 242.3 | Buried Cable | | | | |
| | Exchange | 26 | -5 | 25.3 | 3.1* |
| | Toll | 26 | -5 | 31.9 | 2.8 |
| 242.4 | Submarine Cable | | | | |
| | Exchange | 17.8 | -15 | 55.6 | 3.3 |
| | Toll | 17.6 | -15 | 85.2 | 1.7 |
| 243 | Aerial Wire | | | | |
| | Exchange | 5 | -45 | 4.2 | 28.2 |
| 244 | Underground Conduit | 63 | -5 | 9.3 | 1.5* |
| 261 | Furniture & Office Equipment | | | | |
| | Other | 19.9 | 10 | 18.2 | 3.6* |
| | Computer & AMA Equipment | - | - | - | 0. # |
| 264 | Vehicles & Other Work Equipment | | | | |
| | Motor Vehicles | 4.8 | 6 | 16.4 | 16.2 |
| | Other Work Equipment | 8 | 3 | 28.8 | 8.5 |

*This rate was prescribed previously.
#This rate is not based upon life, salvage and reserve factors.

*FEDERAL COMMUNICATIONS COMMISSION*
*Schedule of Annual Percentages of Depreciation for*
*NEW JERSEY BELL TELEPHONE COMPANY*

*Effective June 1, 1982*

| *Acct. No.* | *Class or Subclass of Plant* | *Average Remaining Life* | *Future Net Salvage* | *Depr. Reserve Ratio* | *Remaining Life Rate* |
|---|---|---|---|---|---|
| | | (Years) | (%) | (%) | (%) |
| 212 | Buildings | 35 | 3 | 24.2 | 2.1 |
| 221 | Central Office Equipment | | | | |
| | Manual | 7.5 | -9 | 35.5 | 9.8 |
| | Panel | 0.8 | -11 | 111 | 0. |
| | Step-by-Step | 3.1 | -2 | 40.9 | 19.7 |
| | Crossbar | 5.9 | -6 | 35.5 | 11.9 |
| | Non-Ded. Circuit | 12.7 | 0 | 20.9 | 6.2 |
| | DDS Circuit | 10.9 | -4 | 15.1 | 8.2 |
| | Radio | 12.6 | 4 | 34.4 | 4.9 |
| | Electronic | 22 | 1 | 11.1 | 4.0 |
| 231 | Station Apparatus | | | | |
| | Teletypewriter | 5.3 | 3 | 15.7 | 15.3 |
| | Telephone & Miscellaneous | 7.8 | 3 | 26.2 | 9.1 |
| | Radio | 8.6 | 2 | 98 | 0. |
| 232 | Station Connections— Other | - | - | - | 5.0# |
| 234 | Large Private Branch Exchanges | | | | |
| | Electronic | 6.6 | 5 | 18.5 | 11.6 |
| | Other | 2.8 | -3 | -12.7 | 41.3 |
| | DDS | 5.5 | 2 | 14.7 | 15.1 |
| 241 | Pole Lines | 32 | -58 | 45.9 | 3.5 |
| 242.1 | Aerial Cable | | | | |
| | Subscriber | 21 | -11 | 18.1 | 4.4 |
| | Trunk | 17.3 | 54 | 31.8 | 0.8 |
| 242.2 | Underground Cable | | | | |
| | Subscriber | 32 | 2 | 14.5 | 2.6 |
| | Trunk | 22 | 28 | 21.7 | 2.3 |
| 242.3 | Buried Cable | 30 | -5 | 16.2 | 3.0* |
| 242.4 | Submarine Cable | 16.5 | -13 | 50.1 | 3.8 |
| 243 | Aerial Wire | 7.9 | -63 | 23.5 | 17.7 |
| 244 | Underground Conduit | 59 | -5 | 16.3 | 1.5* |
| 261 | Furniture & Office Equipment | 16 | 0 | 30.2 | 4.4 |
| | ComputerEquipment | 4.5 | 3 | 24.7 | 16.1 |
| 264 | Vehicles & Other Work Equipment | | | | |
| | Motor Vehicles | 5.7 | 17 | 45.9 | 6.5 |
| | Other Work Equipment | 8.7 | 0 | 40.7 | 6.8 |

*This rate was prescribed previously.
#This rate is not based upon life, salvage and reserve factors.

*FEDERAL COMMUNICATIONS COMMISSION*
*Schedule of Annual Percentages of Depreciation for*
*PACIFIC NORTHWEST BELL TELEPHONE COMPANY—IDAHO*

*Effective August 1, 1982*

| *Acct. No.* | *Class or Subclass of Plant* | *Average Remaining Life* | *Future Net Salvage* | *Depr. Reserve Ratio* | *Remaining Life Rate* |
|---|---|---|---|---|---|
| | | (Years) | (%) | (%) | (%) |
| 212 | Buildings | 35 | 5 | 15.8 | 2.3 |
| 221 | Central Office Equipment | | | | |
| | Manual | 1.5 | -10 | 73.6 | 24.3 |
| | Step-by-Step | 5.6 | -1 | 15.4 | 15.3 |
| | Crossbar | 8.4 | -3 | 33.5 | 8.3 |
| | Non-Ded. Circuit | 14.7 | -10 | 29.5 | 5.5 |
| | DDS Circuit | 11 | -4 | 0 | 9.5 |
| | Radio | 12.6 | -9 | 24.7 | 6.7 |
| | Electronic | 22 | 6 | 5.3 | 4.0 |
| 231 | Station Apparatus | | | | |
| | Teletypewriter | 5.1 | -2 | 32.2 | 13.7 |
| | Telephone & Miscellaneous | 7.1 | 1 | -3.2 | 14.4 |
| | Radio | 3.9 | 2 | 98 | 0. |
| 232 | Station Connections—Other | - | - | - | 5.0# |
| 234 | Large Private Branch Exchanges | | | | |
| | Electronic | 6.2 | 3 | 24.5 | 11.7 |
| | Other | 2.2 | -3 | 36.8 | 30.1 |
| | DDS | 5.5 | 2 | 0 | 17.8 |
| 241 | Pole Lines | 9.7 | -19 | 9 | 11.3 |
| 242.1 | Aerial Cable | | | | |
| | Exchange | 20 | 5 | 32..9 | 3.1 |
| | Toll | 7.1 | -4 | -429.5 | 75.1 |
| 242.2 | Underground Cable | | | | |
| | Exchange | 40 | -7 | 10.7 | 2.4 |
| | Toll | 32 | 9 | 16.1 | 2.3 |
| 242.3 | Buried Cable | | | | |
| | Exchange | 30 | -8 | 13.3 | 3.2 |
| | Toll | 32 | -3 | 21.4 | 2.6 |
| 242.4 | Submarine Cable | | | | |
| | Exchange | 19 | 0 | 31 | 3.6 |
| | Toll | 22 | 0 | 20.7 | 3.6 |
| 243 | Aerial Wire | | | | |
| | Exchange | 6.2 | -38 | 29.6 | 17.5 |
| | Toll | 0.5 | 32 | -23.4 | 182.8 |
| 244 | Underground Conduit | 57 | -5 | 12.7 | 1.6* |
| 261 | Furniture & Office Equipment | 10.8 | 7 | 25.8 | 6.2 |
| | Computer & AMA Systems | 4.3 | 9 | 91 | 0. |
| 264 | Vehicles & Other Work Equipment | 8.3 | 23 | 65.1 | 1.4 |

*This rate was prescribed previously.
#This rate is not based upon life, salvage and reserve factors.

*FEDERAL COMMUNICATIONS COMMISSION*
*Schedule of Annual Percentages of Depreciation for*
*PACIFIC NORTHWEST BELL TELEPHONE COMPANY—OREGON*

*Effective August 1, 1982*

| *Acct. No.* | *Class or Subclass of Plant* | *Average Remaining Life* | *Future Net Salvage* | *Depr. Reserve Ratio* | *Remaining Life Rate* |
|---|---|---|---|---|---|
| | | (Years) | (%) | (%) | (%) |
| 212 | Buildings | 33 | 1 | 17.9 | 2.5* |
| 221 | Central Office Equipment | | | | |
| | Manual | 5.1 | -10 | 36.4 | 14.4 |
| | Step-by-Step | 5 | -4 | 32.8 | 14.2 |
| | Crossbar | 5.3 | 2 | 3.2 | 17.9 |
| | Non-Ded. Circuit | 14.3 | 1 | 15.1 | 5.9 |
| | DDS Circuit | 11.2 | -4 | 11.5 | 8.3 |
| | Radio | 14.1 | -6 | 30.3 | 5.4 |
| | Electronic | 21 | 7 | 6.5 | 4.1 |
| 231 | Station Apparatus | | | | |
| | Teletypewriter | 4.4 | -2 | -2.6 | 23.8 |
| | Telephone & Miscellaneous | 6.1 | 6 | 10.4 | 13.7 |
| | Radio | 3.9 | 2 | 65.6 | 8.3 |
| 232 | Station Connections— | | | | |
| | Other | - | - | - | 5.0# |
| 234 | Large Private Branch Exchanges | | | | |
| | Electronic | 6.5 | 1 | 10.4 | 13.6 |
| | Other | 2.9 | -2 | 1.7 | 34.6 |
| | DDS | 5.5 | 2 | 13.4 | 15.4 |
| 241 | Pole Lines | 16.2 | -27 | 50.7 | 4.7 |
| 242.1 | Aerial Cable | | | | |
| | Exchange | 19.1 | -8 | 20.6 | 4.6 |
| | Toll | 18 | 24 | 36.3 | 2.2 |
| 242.2 | Underground Cable | | | | |
| | Exchange | 33 | -10 | 13.5 | 2.9 |
| | Toll | 18.1 | 25 | 50 | 1.4 |
| 242.3 | Buried Cable | | | | |
| | Exchange | 30 | -13 | 14.2 | 3.3 |
| | Toll | 23 | -6 | 59.6 | 2.0 |
| 242.4 | Submarine Cable | | | | |
| | Exchange | 16.5 | 0 | 38.3 | 3.7 |
| | Toll | 12 | 0 | 69.5 | 2.5 |
| 243 | Aerial Wire | | | | |
| | Exchange | 5.7 | -27 | 22.8 | 18.3 |
| | Toll | 4.9 | 1 | 99 | 0. |
| 244 | Underground Conduit | 56 | -5 | 13.1 | 1.6* |
| 261 | Furniture & Office Equipment | 12.7 | 14 | 15.7 | 5.5 |
| | Computer & AMA Systems | 5.3 | 10 | 24.8 | 12.3 |
| 264 | Vehicles & Other Work Equipment | 7.3 | 17 | 41 | 5.8 |

*This rate was prescribed previously.
#This rate is not based upon life, salvage and reserve factors.

*FEDERAL COMMUNICATIONS COMMISSION*
*Schedule of Annual Percentages of Depreciation for*
*PACIFIC NORTHWEST BELL TELEPHONE COMPANY—WASHINGTON*

*Effective August 1, 1982*

| *Acct. No.* | *Class or Subclass of Plant* | *Average Remaining Life* | *Future Net Salvage* | *Depr. Reserve Ratio* | *Remaining Life Rate* |
|---|---|---|---|---|---|
| | | (Years) | (%) | (%) | (%) |
| 212 | Buildings | 36 | 3 | 14.5 | 2.3* |
| 221 | Central Office Equipment | | | | |
| | Manual | 1.5 | -11 | 37.7 | 48.9 |
| | Step-by-Step | 5.4 | -5 | 37.9 | 12.4 |
| | Crossbar | 4.6 | -5 | 26.2 | 17.1 |
| | Non-Ded. Circuit | 15.7 | 3 | 20.9 | 4.8 |
| | DDS Circuit | 11 | -4 | 5.9 | 8.9 |
| | Radio | 15.5 | -7 | 32.7 | 4.8 |
| | Electronic | 22 | 7 | 5.4 | 4.0 |
| 231 | Station Apparatus | | | | |
| | Teletypewriter | 5 | -2 | 1.4 | 20.1 |
| | Telephone & Miscellaneous | 6.6 | 1 | 14.7 | 12.8 |
| | Radio | 3.9 | 2 | 59.5 | 9.9 |
| 232 | Station Connections— | | | | |
| | Other | - | - | - | 5.0# |
| 234 | Large Private Branch Exchanges | | | | |
| | Electronic | 6.4 | 3 | 8.2 | 13.9 |
| | Other | 3.3 | -2 | -2 | 31.5 |
| | DDS | 5.5 | 2 | 9.5 | 16.1 |
| 241 | Pole Lines | 19.8 | -55 | 28.4 | 6.4 |
| 242.1 | Aerial Cable | | | | |
| | Exchange | 19.2 | -6 | 22 | 4.4 |
| | Toll | 17.5 | 43 | 47.9 | 0.5 |
| 242.2 | Underground Cable | | | | |
| | Exchange | 36 | -6 | 12.5 | 2.6 |
| | Toll | 22 | 54 | 33.2 | 0.6 |
| 242.3 | Buried Cable | | | | |
| | Exchange | 30 | -12 | 14.7 | 3.2 |
| | Toll | 26 | -6 | 47.4 | 2.3 |
| 242.4 | Submarine Cable | | | | |
| | Exchange | 17.8 | -4 | 33.3 | 4.0* |
| | Toll | 12.9 | -4 | 92.7 | 0.9 |
| 243 | Aerial Wire | | | | |
| | Exchange | 4.5 | -51 | -1.7 | 33.9 |
| | Toll | 0.6 | 17 | 83 | 0. |
| 244 | Underground Conduit | 58 | -9 | 12.1 | 1.7* |
| 261 | Furniture & Office Equipment | 10.8 | 7 | 13.7 | 7.3 |
| | Art Objects | - | - | - | 0. # |
| | Computer & AMA Systems | 4.3 | 9 | 28.7 | 14.5 |
| 264 | Vehicles & Other Work Equipment | 7.3 | 23 | 37.5 | 5.4 |

*This rate was prescribed previously.
#This rate is not based upon life, salvage and reserve factors.

*FEDERAL COMMUNICATIONS COMMISSION*
*Schedule of Annual Percentages of Depreciation for*
*THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY*

*Effective January 1, 1983*

| *Acct. No.* | *Class or Subclass of Plant* | *Average Remaining Life* | *Future Net Salvage* | *Depr. Reserve Ratio* | *Remaining Life Rate* |
|---|---|---|---|---|---|
| | | (Years) | (%) | (%) | (%) |
| 212 | Buildings | 37 | 9 | 17 | 2.0 |
| 221 | Central Office Equipment | | | | |
| | Manual | 2.3 | -10 | 49.2 | 26.4 |
| | Step-by-Step | 3 | -6 | 45.9 | 20.0 |
| | Crossbar | 5.4 | -4 | 26.6 | 14.3 |
| | Non-Ded. Circuit | 12.6 | -2 | 23.6 | 6.2 |
| | DDS Circuit | 11 | -4 | 11.1 | 8.4 |
| | Radio | 15 | -8 | 28.9 | 5.3 |
| | Electronic | 22 | 5 | 5.3 | 4.1 |
| 231 | Station Apparatus | | | | |
| | Teletypewriter | 5.9 | -3 | 19.2 | 14.2 |
| | Telephone & Miscellaneous | 6.4 | 5 | 22.1 | 11.4 |
| | Radio | 7.4 | 1 | 56.9 | 5.7 |
| 232 | Station Connections— Other | - | - | - | 5.0# |
| 234 | Large Private Branch Exchanges | | | | |
| | Electronic | 6.8 | 5 | 10 | 12.5 |
| | Other | 3.3 | -3 | 20.6 | 25.0 |
| | DDS | 5.5 | 2 | 14.8 | 15.1 |
| 241 | Pole Lines | 27 | -67 | 33.7 | 4.9 |
| 242.1 | Aerial Cable | | | | |
| | Exchange | 22 | -21 | 14.7 | 4.8 |
| | Toll | 9.3 | 34 | 33.2 | 3.5 |
| 242.2 | Underground Cable | | | | |
| | Exchange | 37 | -3 | 12.3 | 2.5 |
| | Toll | 25 | 22 | 17.4 | 2.4 |
| 242.3 | Buried Cable | | | | |
| | Exchange | 27 | -15 | 13.6 | 3.8 |
| | Toll | 24 | -6 | 32.9 | 3.0 |
| 242.4 | Submarine Cable | 23 | -53 | 38.9 | 5.0 |
| 243 | Aerial Wire | | | | |
| | Exchange | 6.1 | -21 | 38.1 | 13.6 |
| | Toll | 12.2 | 16 | -45.3 | 10.6 |
| 244 | Underground Conduit | 58 | -20 | 10.7 | 1.9 |
| 261 | Furniture & Office Equipment | | | | |
| | Storeroom & Other | 21 | 2 | 17.5 | 3.8 |
| | Computer & AMA Systems | 5.2 | 1 | 32.7 | 12.8 |
| 264 | Vehicles & Other Work Equipment | 9.3 | 15 | 32.5 | 5.6 |

*This rate is not based upon life, salvage and reserve factors.

## APPENDIX 2

*FEDERAL COMMUNICATIONS COMMISSION*
*Schedule of Annual Percentages of Depreciation*
*Calculated under the Equal Life Group Methodology for*
*BELL TELEPHONE COMPANY OF NEVADA*

| Acct. No. | Class or Subclass of Plant (a) | Year (b)* | Proj. Life (c) | Fut. Net Salv. (d) | Original Cost Rates Age at Beginning of Year 0.0 (e) | 0.5 (f) | 1.5 (g) | 2.5 (h) | Net Salv. Rate (i = −d/c) |
|---|---|---|---|---|---|---|---|---|---|
| | | | (Yrs.) | (%) | (%) | (%) | (%) | (%) | (%) |
| 221 | Central Office Equipment | | | | | | | | |
| | Non-Ded. Circuit | 1983 | 15 | 3 | 11.1 | 9.9 | 9.1 | 8.5 | -0.2 |
| | DDS Circuit | 1983 | 12 | -4 | 15.6 | 13.3 | 11.7 | 10.6 | 0.3 |
| | Radio | 1983 | 13 | -4 | 14.6 | 12.4 | 11.0 | 10.0 | 0.3 |
| | Electronic | 1983 | 21 | 4 | 8.3 | 7.0 | 6.3 | 6.0 | -0.2 |
| 241 | Pole Lines | 1982 | 38 | -59 | 7.6 | 5.8 | 4.9 | 4.4 | 1.6 |
| 242.1 | Aerial Cable | | | | | | | | |
| | Exchange | 1982 | 23 | -16 | 9.5 | 8.0 | 7.1 | 6.6 | 0.7 |
| | Toll | 1982 | 23 | -10 | 13.2 | 9.2 | 7.4 | 6.4 | 0.4 |
| 242.2 | Underground Cable | | | | | | | | |
| | Exchange | 1982 | 22 | -4 | 8.4 | 7.4 | 6.8 | 6.4 | 0.2 |
| | Toll | 1982 | 21 | -4 | 8.4 | 7.4 | 6.8 | 6.4 | 0.2 |
| 242.3 | Buried Cable | | | | | | | | |
| | Exchange | 1982 | 33 | -6 | 5.4 | 4.6 | 4.2 | 3.9 | 0.2 |
| | Toll | 1982 | 31 | -2 | 6.6 | 5.2 | 4.6 | 4.2 | 0.1 |
| 244 | Underground Conduit | 1982 | 61 | -2 | 1.8 | 1.8 | 1.8 | 1.8 | 0. |

*ELG rates are effective January 1 of the year shown in column b and are to be applied to plant additions for that year and subsequent years.

*FEDERAL COMMUNICATIONS COMMISSION*
*Schedule of Annual Percentages of Depreciation*
*Calculated under the Equal Life Group Methodology for*
*THE BELL TELEPHONE COMPANY OF PENNSYLVANIA*

| Acct. No. | Class or Subclass of Plant (a) | Year (b)* | Proj. Life (c) | Fut. Net Salv. (d) | Original Cost Rates Age at Beginning of Year 0.0 (e) | 0.5 (f) | 1.5 (g) | 2.5 (h) | Net Salv. Rate (i = −d/c) |
|---|---|---|---|---|---|---|---|---|---|
| | | | (Yrs.) | (%) | (%) | (%) | (%) | (%) | (%) |
| 221 | Central Office Equipment | | | | | | | | |
| | Non-Ded. Circuit | 1982 | 17 | -2 | 10.2 | 9.3 | 8.5 | 8.0 | 0.1 |
| | DDS Circuit | 1982 | 13 | -4 | 11.8 | 10.6 | 9.9 | 9.3 | 0.3 |
| | Radio | 1982 | 18 | 3 | 10.8 | 8.6 | 7.6 | 7.0 | -0.2 |
| | Electronic | 1982 | 23 | 3 | 7.6 | 6.4 | 5.8 | 5.5 | -0.1 |
| 241 | Pole Lines | 1982 | 39 | -61 | 7.7 | 5.8 | 4.9 | 4.4 | 1.6 |
| 242.1 | Aerial Cable | | | | | | | | |
| | Exchange—Other | 1982 | 27 | -6 | 5.2 | 5.1 | 5.1 | 5.0 | 0.2 |
| | Exchange—House | 1982 | 32 | -20 | 6.3 | 5.4 | 4.9 | 4.6 | 0.6 |
| | Toll | 1982 | 34 | 58 | 7.4 | 5.6 | 4.8 | 4.3 | -1.7 |
| 242.2 | Underground Cable | | | | | | | | |
| | Exchange | 1982 | 43 | 18 | 5.2 | 4.1 | 3.6 | 3.3 | -0.4 |
| | Toll | 1982 | 35 | 56 | 6.5 | 5.1 | 4.4 | 4.0 | -1.6 |
| 242.3 | Buried Cable | | | | | | | | |
| | Exchange | 1982 | 28 | -5 | 4.4 | 4.4 | 4.4 | 4.4 | 0.2 |
| | Toll | 1982 | 35 | -4 | 3.5 | 3.5 | 3.5 | 3.5 | 0.1 |
| 242.4 | Submarine Cable | | | | | | | | |
| | Exchange | 1982 | 35 | 0 | 3.0 | 3.0 | 3.0 | 3.0 | 0. |
| | Toll | 1982 | 35 | 0 | 3.0 | 3.0 | 3.0 | 3.0 | 0. |
| 243 | Aerial Wire | | | | | | | | |
| | Exchange | 1982 | 9 | -35 | 25.0 | 17.6 | 14.2 | 12.3 | 3.9 |
| 244 | Underground Conduit | 1982 | 64 | -10 | 3.1 | 2.6 | 2.3 | 2.2 | 0.2 |

*ELG rates are effective January 1 of the year shown in column b and are to be applied to plant additions for that year and subsequent years.

*FEDERAL COMMUNICATIONS COMMISSION*
*Schedule of Annual Percentages of Depreciation*
*Calculated under the Equal Life Group Methodology for*
*CINCINNATI BELL, INCORPORATED—KENTUCKY*

| Acct. No. | Class or Subclass of Plant (a) | Year (b)* | Proj. Life (c) | Fut. Net Salv. (d) | Original Cost Rates Age at Beginning of Year 0.0 (e) | 0.5 (f) | 1.5 (g) | 2.5 (h) | Net Salv. Rate (i = −d/c) |
|---|---|---|---|---|---|---|---|---|---|
| | | | (Yrs.) | (%) | (%) | (%) | (%) | (%) | (%) |
| 221 | Central Office Equipment | | | | | | | | |
| | Non-Ded. Circuit | 1982 | 16.5 | 7 | 10.4 | 9.3 | 8.6 | 8.0 | -0.4 |
| | DDS Circuit | 1982 | 11.7 | -4 | 12.0 | 11.2 | 10.5 | 9.9 | 0.3 |
| | Radio | 1982 | 18 | -2 | 8.4 | 8.4 | 8.4 | 8.1 | 0.1 |
| | Electronic | 1983 | 22 | 3 | 10.6 | 7.9 | 6.6 | 6.0 | -0.1 |
| 241 | Pole Lines | 1982 | 27 | -21 | 8.6 | 6.8 | 5.9 | 5.4 | 0.8 |
| 242.1 | Aerial Cable | | | | | | | | |
| | Other Aerial | 1982 | 27 | -5 | 5.6 | 5.2 | 4.9 | 4.7 | 0.2 |
| 242.2 | Underground Cable | 1982 | 44 | -26 | 4.7 | 3.9 | 3.5 | 3.2 | 0.6 |
| 242.3 | Buried Cable | 1982 | 35 | -5 | 4.1 | 3.9 | 3.8 | 3.7 | 0.1 |
| 242.4 | Submarine Cable | 1982 | 27 | 0 | 5.3 | 5.0 | 4.9 | 4.7 | 0. |
| 244 | Underground Conduit | 1982 | 60 | 0 | 1.8 | 1.8 | 1.8 | 1.8 | 0. |

*ELG rates are effective January 1 of the year shown in column b and are to be applied to plant additions for that year and subsequent years.

*FEDERAL COMMUNICATIONS COMMISSION*
*Schedule of Annual Percentages of Depreciation*
*Calculated under the Equal Life Group Methodology for*
*CINCINNATI BELL, INCORPORATED—OHIO*

| Acct. No. | Class or Subclass of Plant (a) | Year (b)* | Proj. Life (c) | Fut. Net Salv. (d) | Original Cost Rates Age at Beginning of Year 0.0 (e) | 0.5 (f) | 1.5 (g) | 2.5 (h) | Net Salv. Rate (i = − d/c) |
|---|---|---|---|---|---|---|---|---|---|
| | | | (Yrs.) | (%) | (%) | (%) | (%) | (%) | (%) |
| 221 | Central Office Equipment | | | | | | | | |
| | Non-Ded. Circuit | 1982 | 16 | 8 | 10.7 | 9.6 | 8.8 | 8.2 | -0.5 |
| | DDS Circuit | 1982 | 12.1 | -4 | 11.6 | 10.8 | 10.2 | 9.7 | 0.3 |
| | Radio | 1982 | 18 | -2 | 8.4 | 8.4 | 8.4 | 8.1 | 0.1 |
| | Electronic | 1983 | 21 | 3 | 8.3 | 7.0 | 6.3 | 6.0 | -0.1 |
| 241 | Pole Lines | 1982 | 33 | -3 | 7.7 | 6.0 | 5.1 | 4.7 | 0.1 |
| 242.1 | Aerial Cable | | | | | | | | |
| | Other Aerial | 1982 | 27 | -17 | 5.5 | 5.1 | 4.9 | 4.7 | 0.6 |
| 242.2 | Underground Cable | 1982 | 44 | -14 | 4.6 | 3.8 | 3.4 | 3.2 | 0.3 |
| 242.3 | Buried Cable | 1982 | 35 | -5 | 4.1 | 3.9 | 3.8 | 3.7 | 0.1 |
| 242.4 | Submarine Cable | 1982 | 27 | 0 | 5.3 | 5.0 | 4.9 | 4.7 | 0. |
| 244 | Underground Conduit | 1982 | 60 | 0 | 1.9 | 1.8 | 1.8 | 1.8 | 0. |

*ELG rates are effective January 1 of the year shown in column b and are to be applied to plant additions for that year and subsequent years.

*FEDERAL COMMUNICATIONS COMMISSION*
*Schedule of Annual Percentages of Depreciation*
*Calculated under the Equal Life Group Methodology for*
*THE DIAMOND STATE TELEPHONE COMPANY*

| Acct. No. | Class or Subclass of Plant (a) | Year (b)* | Proj. Life (c) | Fut. Net Salv. (d) | Original Cost Rates Age at Beginning of Year 0.0 (e) | 0.5 (f) | 1.5 (g) | 2.5 (h) | Net Salv. Rate (i = − d/c) |
|---|---|---|---|---|---|---|---|---|---|
| | | | (Yrs.) | (%) | (%) | (%) | (%) | (%) | (%) |
| 221 | Central Office Equipment | | | | | | | | |
| | Non-Ded. Circuit | 1983 | 14 | 5 | 15.4 | 11.2 | 9.3 | 8.3 | -0.4 |
| | DDS Circuit | 1983 | 12.4 | -4 | 12.9 | 10.9 | 9.9 | 9.3 | 0.3 |
| | Radio | 1983 | 15 | 1 | 13.0 | 10.9 | 9.7 | 8.8 | -0.1 |
| | Electronic | 1983 | 21 | 0 | 8.3 | 7.0 | 6.3 | 6.0 | 0. |
| 241 | Pole Lines | 1982 | 40 | -88 | 6.3 | 5.0 | 4.3 | 4.0 | 2.2 |
| 242.1 | Aerial Cable | | | | | | | | |
| | Exchange—Other | 1982 | 22 | -5 | 6.5 | 6.3 | 6.1 | 5.9 | 0.2 |
| | Exchange—House | 1982 | 25 | -16 | 7.3 | 6.4 | 5.9 | 5.5 | 0.6 |
| | Toll | 1982 | 22 | 68 | 10.4 | 8.0 | 6.9 | 6.2 | -3.1 |
| 242.2 | Underground Cable | | | | | | | | |
| | Exchange | 1982 | 38 | 12 | 3.6 | 3.4 | 3.2 | 3.2 | -0.3 |
| | Toll | 1982 | 30 | 28 | 6.4 | 5.2 | 4.6 | 4.3 | -0.9 |
| 242.3 | Buried Cable | | | | | | | | |
| | Exchange—Cable | 1982 | 31 | 5 | 4.0 | 4.0 | 4.0 | 4.0 | 0.2 |
| | Exchange—Wire | 1982 | 30 | -5 | 5.9 | 5.8 | 5.6 | 5.4 | 0.2 |
| | Toll—Cable | 1982 | 20 | 0 | 9.2 | 7.3 | 6.4 | 6.0 | 0. |
| 242.4 | Submarine Cable | 1982 | 28 | 0 | 3.8 | 3.8 | 3.8 | 3.8 | 0. |
| 243 | Aerial Wire | | | | | | | | |
| | Exchange | 1982 | 13 | -35 | 17.3 | 13.0 | 10.9 | 9.7 | 2.7 |
| 244 | Underground Conduit | 1982 | 65 | -15 | 3.0 | 2.5 | 2.3 | 2.1 | 0.2 |

*ELG rates are effective January 1 of the year shown in column b and are to be applied to plant additions for that year and subsequent years.

*FEDERAL COMMUNICATIONS COMMISSION*
*Schedule of Annual Percentages of Depreciation*
*Calculated under the Equal Life Group Methodology for*
*THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY—ARIZONA*

| *Acct. No.* | *Class or Subclass of Plant (a)* | *Year (b)** | *Proj. Life (c)* | *Fut. Net Salv. (d)* | *Original Cost Rates* — *Age at Beginning of Year* — *0.0 (e)* | *0.5 (f)* | *1.5 (g)* | *2.5 (h)* | *Net Salv. Rate (i = −d/c)* |
|---|---|---|---|---|---|---|---|---|---|
| | | | (Yrs.) | (%) | (%) | (%) | (%) | (%) | (%) |
| 221 | Central Office Equipment | | | | | | | | |
| | Non-Ded. Circuit | 1983 | 16 | 2 | 12.9 | 10.1 | 8.7 | 8.0 | -0.1 |
| | DDS Circuit | 1983 | 11.8 | -4 | 16.7 | 13.0 | 11.1 | 10.0 | 0.3 |
| | Radio | 1983 | 17.4 | -1 | 8.1 | 7.1 | 6.6 | 6.4 | 0.1 |
| | Electronic | 1983 | 20 | 4 | 9.0 | 7.6 | 6.9 | 6.5 | -0.2 |
| 241 | Pole Lines | 1982 | 26 | -22 | 13.0 | 9.0 | 7.2 | 6.3 | 0.8 |
| 242.1 | Aerial Cable | | | | | | | | |
| | Exchange—Other | 1982 | 26 | -7 | 7.7 | 6.2 | 5.5 | 5.1 | 0.3 |
| | Exchange—Building | 1982 | 26 | -17 | 7.7 | 6.2 | 5.5 | 5.1 | 0.7 |
| | Toll | 1982 | 20 | 27 | 9.7 | 7.8 | 6.8 | 6.3 | -1.4 |
| 242.2 | Underground Cable | | | | | | | | |
| | Exchange | 1982 | 40 | 16 | 3.3 | 3.0 | 2.9 | 2.8 | -0.4 |
| | Toll | 1982 | 30 | 14 | 4.3 | 4.0 | 3.8 | 3.7 | -0.5 |
| 242.3 | Buried Cable | | | | | | | | |
| | Exchange | 1982 | 33 | -3 | 4.8 | 4.4 | 4.2 | 4.1 | 0.1 |
| | Toll | 1982 | 33 | 6 | 4.8 | 4.4 | 4.2 | 4.1 | -0.2 |
| 242.4 | Submarine Cable | | | | | | | | |
| | Exchange | 1982 | 30 | 0 | 9.3 | 7.0 | 5.9 | 5.3 | 0. |
| | Toll | 1982 | 30 | 0 | 9.3 | 7.0 | 5.9 | 5.3 | 0. |
| 244 | Underground Conduit | 1982 | 65 | -7 | 1.7 | 1.7 | 1.7 | 1.7 | 0.1 |

*ELG rates are effective January 1 of the year shown in column b and are to be applied to plant additions for that year and subsequent years.

*FEDERAL COMMUNICATIONS COMMISSION*
*Schedule of Annual Percentages of Depreciation*
*Calculated under the Equal Life Group Methodology for*
*THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY—COLORADO*

| Acct. No. | Class or Subclass of Plant (a) | Year (b)* | Proj. Life (c) | Fut. Net Salv. (d) | Original Cost Rates Age at Beginning of Year 0.0 (e) | 0.5 (f) | 1.5 (g) | 2.5 (h) | Net Salv. Rate (i = −d/c) |
|---|---|---|---|---|---|---|---|---|---|
| | | | (Yrs.) | (%) | (%) | (%) | (%) | (%) | (%) |
| 221 | Central Office Equipment | | | | | | | | |
| | Non-Ded. Circuit | 1983 | 16.5 | 0 | 12.0 | 9.4 | 8.2 | 7.5 | 0. |
| | DDS Circuit | 1983 | 12.6 | -4 | 15.1 | 11.8 | 10.2 | 9.3 | 0.3 |
| | Radio | 1983 | 18 | 0 | 8.7 | 8.7 | 8.6 | 8.2 | 0. |
| | Electronic | 1983 | 24 | 4 | 7.3 | 6.2 | 5.6 | 5.3 | -0.2 |
| 241 | Pole Lines | 1982 | 16 | -44 | 19.6 | 13.4 | 10.6 | 9.1 | 2.8 |
| 242.1 | Aerial Cable | | | | | | | | |
| | Exchange—Other | 1982 | 27 | -6 | 7.6 | 6.3 | 5.6 | 5.2 | 0.2 |
| | Exchange—Building | 1982 | 27 | -15 | 7.6 | 6.3 | 5.6 | 5.2 | 0.6 |
| | Toll | 1982 | 21 | 24 | 9.5 | 7.8 | 6.9 | 6.4 | -1.1 |
| 242.2 | Underground Cable | | | | | | | | |
| | Exchange | 1982 | 40 | 21 | 3.8 | 3.8 | 3.8 | 3.8 | -0.5 |
| | Toll | 1982 | 30 | 23 | 5.0 | 5.0 | 5.0 | 5.0 | -0.8 |
| 242.3 | Buried Cable | | | | | | | | |
| | Exchange | 1982 | 33 | 3 | 5.3 | 5.1 | 5.0 | 4.8 | 0.1 |
| | Toll | 1982 | 33 | 10 | 5.3 | 5.1 | 5.0 | 4.8 | -0.3 |
| 242.4 | Submarine Cable | | | | | | | | |
| | Exchange | 1982 | 30 | 0 | 9.3 | 7.0 | 5.9 | 5.3 | 0. |
| | Toll | 1982 | 30 | 0 | 9.3 | 7.0 | 5.9 | 5.3 | 0. |
| 244 | Underground Conduit | 1982 | 66 | -7 | 1.7 | 1.7 | 1.6 | 1.6 | 0.1 |

*ELG rates are effective January 1 of the year shown in column b and are to be applied to plant additions for that year and subsequent years.

*FEDERAL COMMUNICATIONS COMMISSION*
*Schedule of Annual Percentages of Depreciation*
*Calculated under the Equal Life Group Methodology for*
*THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY—IDAHO*

| *Acct. No.* | *Class or Subclass of Plant (a)* | *Year (b)** | *Proj. Life (c)* | *Fut. Net Salv. (d)* | *Original Cost Rates* — *Age at Beginning of Year* *0.0 (e)* | *0.5 (f)* | *1.5 (g)* | *2.5 (h)* | *Net Salv. Rate (i = − d/c)* |
|---|---|---|---|---|---|---|---|---|---|
| | | | (Yrs.) | (%) | (%) | (%) | (%) | (%) | (%) |
| 221 | Central Office Equipment | | | | | | | | |
| | Non-Ded. Circuit | 1983 | 17 | 6 | 12.6 | 9.8 | 8.5 | 7.7 | -0.4 |
| | DDS Circuit | 1983 | 11 | -4 | 18.4 | 14.0 | 11.8 | 10.6 | 0.4 |
| | Radio | 1983 | 16 | -4 | 11.6 | 9.2 | 8.0 | 7.4 | 0.3 |
| | Electronic | 1983 | 23 | 3 | 7.6 | 6.4 | 5.8 | 5.5 | -0.1 |
| 241 | Pole Lines | 1982 | 18 | -37 | 20.7 | 13.5 | 10.3 | 8.7 | 2.1 |
| 242.1 | Aerial Cable | | | | | | | | |
| | Exchange—Other | 1982 | 28 | -4 | 7.9 | 7.2 | 6.6 | 6.2 | 0.1 |
| | Exchange—Building | 1982 | 28 | -7 | 7.9 | 7.2 | 6.6 | 6.2 | 0.3 |
| | Toll | 1982 | 22 | 14 | 9.9 | 9.0 | 8.1 | 7.5 | -0.6 |
| 242.2 | Underground Cable | | | | | | | | |
| | Exchange | 1982 | 40 | 8 | 5.8 | 4.6 | 4.0 | 3.7 | -0.2 |
| | Toll | 1982 | 34 | 9 | 6.7 | 5.3 | 4.6 | 4.2 | -0.3 |
| 242.3 | Buried Cable | | | | | | | | |
| | Exchange | 1982 | 35 | -1 | 5.1 | 4.8 | 4.5 | 4.3 | 0. |
| | Toll | 1982 | 35 | 0 | 5.1 | 4.8 | 4.5 | 4.3 | 0. |
| 242.4 | Submarine Cable | | | | | | | | |
| | Exchange | 1982 | 30 | 0 | 9.3 | 7.0 | 5.9 | 5.3 | 0. |
| | Toll | 1982 | 30 | 0 | 9.3 | 7.0 | 5.9 | 5.3 | 0. |
| 244 | Underground Conduit | 1982 | 66 | -7 | 1.7 | 1.7 | 1.7 | 1.6 | 0.1 |

*ELG rates are effective January 1 of the year shown in column b and are to be applied to plant additions for that year and subsequent years.

*FEDERAL COMMUNICATIONS COMMISSION*
*Schedule of Annual Percentages of Depreciation*
*Calculated under the Equal Life Group Methodology for*
*THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY—MONTANA*

| *Acct. No.* | *Class or Subclass of Plant (a)* | *Year (b)** | *Proj. Life (c)* | *Fut. Net Salv. (d)* | *Original Cost Rates* Age at Beginning of Year 0.0 (e) | 0.5 (f) | 1.5 (g) | 2.5 (h) | *Net Salv. Rate (i = −d/c)* |
|---|---|---|---|---|---|---|---|---|---|
| | | | (Yrs.) | (%) | (%) | (%) | (%) | (%) | (%) |
| 221 | Central Office Equipment | | | | | | | | |
| | Non-Ded. Circuit | 1983 | 16.5 | 8 | 13.6 | 10.3 | 8.7 | 7.8 | -0.5 |
| | DDS Circuit | 1983 | 11 | -4 | 19.1 | 14.1 | 11.8 | 10.5 | 0.4 |
| | Radio | 1983 | 20 | -8 | 6.8 | 6.5 | 6.3 | 6.1 | 0.4 |
| | Electronic | 1983 | 25 | 5 | 7.1 | 6.0 | 5.4 | 5.1 | -0.2 |
| 241 | Pole Lines | 1982 | 16 | -48 | 22.4 | 14.7 | 11.3 | 9.5 | 3.0 |
| 242.1 | Aerial Cable | | | | | | | | |
| | Exchange—Other | 1982 | 25 | -4 | 8.6 | 7.0 | 6.2 | 5.7 | 0.2 |
| | Exchange—Building | 1982 | 25 | -11 | 8.6 | 7.0 | 6.2 | 5.7 | 0.4 |
| | Toll | 1982 | 20 | 14 | 10.6 | 8.5 | 7.5 | 6.8 | -0.7 |
| 242.2 | Underground Cable | | | | | | | | |
| | Exchange | 1982 | 42 | 11 | 3.1 | 3.0 | 2.9 | 2.9 | -0.3 |
| | Toll | 1982 | 32 | -3 | 4.0 | 3.9 | 3.8 | 3.7 | 0.1 |
| 242.3 | Buried Cable | | | | | | | | |
| | Exchange | 1982 | 33 | 4 | 4.8 | 4.2 | 3.9 | 3.8 | -0.1 |
| | Toll | 1982 | 33 | 14 | 4.8 | 4.2 | 3.9 | 3.8 | -0.4 |
| 242.4 | Submarine Cable | | | | | | | | |
| | Exchange | 1982 | 30 | 0 | 9.3 | 7.0 | 5.9 | 5.3 | 0. |
| | Toll | 1982 | 30 | 0 | 9.3 | 7.0 | 5.9 | 5.3 | 0. |
| 244 | Underground Conduit | 1982 | 67 | -7 | 1.7 | 1.6 | 1.6 | 1.6 | 0.1 |

*ELG rates are effective January 1 of the year shown in column b and are to be applied to plant additions for that year and subsequent years.

*FEDERAL COMMUNICATIONS COMMISSION*
*Schedule of Annual Percentages of Depreciation*
*Calculated under the Equal Life Group Methodology for*
*THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY—NEW MEXICO*

| *Acct. No.* | *Class or Subclass of Plant (a)* | *Year (b)** | *Proj. Life (c)* | *Fut. Net Salv. (d)* | *Original Cost Rates Age at Beginning of Year 0.0 (e)* | *0.5 (f)* | *1.5 (g)* | *2.5 (h)* | *Net Salv. Rate (i = − d/c)* |
|---|---|---|---|---|---|---|---|---|---|
| | | | (Yrs.) | (%) | (%) | (%) | (%) | (%) | (%) |
| 221 | Central Office Equipment | | | | | | | | |
| | Non-Ded. Circuit | 1983 | 18 | 10 | 12.0 | 9.6 | 8.4 | 7.7 | -0.6 |
| | DDS Circuit | 1983 | 10.1 | -4 | 19.8 | 15.5 | 13.1 | 11.7 | 0.4 |
| | Radio | 1983 | 17 | -2 | 12.0 | 9.3 | 8.0 | 7.3 | 0.1 |
| | Electronic | 1983 | 25 | 5 | 7.1 | 6.0 | 5.4 | 5.1 | -0.2 |
| 241 | Pole Lines | 1982 | 24 | -29 | 15.2 | 10.3 | 8.1 | 7.0 | 1.2 |
| 242.1 | Aerial Cable | | | | | | | | |
| | Exchange—Other | 1982 | 31 | -3 | 6.7 | 5.6 | 5.1 | 4.8 | 0.1 |
| | Exchange—Building | 1982 | 31 | -8 | 6.7 | 5.6 | 5.1 | 4.8 | 0.3 |
| | Toll | 1982 | 28 | 20 | 7.3 | 6.1 | 5.5 | 5.2 | -0.7 |
| 242.2 | Underground Cable | | | | | | | | |
| | Exchange | 1982 | 45 | 15 | 3.5 | 3.1 | 2.9 | 2.8 | -0.3 |
| | Toll | 1982 | 33 | 12 | 4.7 | 4.1 | 3.9 | 3.7 | -0.4 |
| 242.3 | Buried Cable | | | | | | | | |
| | Exchange | 1982 | 36 | -6 | 4.7 | 4.2 | 4.0 | 3.8 | 0.2 |
| | Toll | 1982 | 36 | 5 | 4.7 | 4.2 | 4.0 | 3.8 | -0.1 |
| 242.4 | Submarine Cable | | | | | | | | |
| | Exchange | 1982 | 30 | 0 | 4.0 | 3.9 | 3.8 | 3.7 | 0. |
| | Toll | 1982 | 30 | 0 | 4.0 | 3.9 | 3.8 | 3.7 | 0. |
| 244 | Underground Conduit | 1982 | 66 | -7 | 1.7 | 1.7 | 1.6 | 1.6 | 0.1 |

*ELG rates are effective January 1 of the year shown in column b and are to be applied to plant additions for that year and subsequent years.

*FEDERAL COMMUNICATIONS COMMISSION*
*Schedule of Annual Percentages of Depreciation*
*Calculated under the Equal Life Group Methodology for*
*THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY—UTAH*

| *Acct. No.* | *Class or Subclass of Plant (a)* | *Year (b)** | *Proj. Life (c)* | *Fut. Net Salv. (d)* | *Original Cost Rates* Age at Beginning of Year 0.0 (e) | 0.5 (f) | 1.5 (g) | 2.5 (h) | *Net Salv. Rate (i = − d/c)* |
|---|---|---|---|---|---|---|---|---|---|
| | | | (Yrs.) | (%) | (%) | (%) | (%) | (%) | (%) |
| 221 | Central Office Equipment | | | | | | | | |
| | Non-Ded. Circuit | 1983 | 19 | 2 | 9.3 | 7.9 | 7.1 | 6.7 | -0.1 |
| | DDS Circuit | 1983 | 13.4 | -4 | 12.7 | 10.7 | 9.6 | 8.9 | 0.3 |
| | Radio | 1983 | 19 | -2 | 9.8 | 8.0 | 7.1 | 6.6 | 0.1 |
| | Electronic | 1983 | 22 | 6 | 7.9 | 6.7 | 6.1 | 5.7 | -0.3 |
| 241 | Pole Lines | 1982 | 28 | -40 | 14.8 | 10.0 | 7.9 | 6.7 | 1.4 |
| 242.1 | Aerial Cable | | | | | | | | |
| | Exchange—Other | 1982 | 29 | 0 | 7.1 | 6.0 | 5.5 | 5.1 | 0. |
| | Exchange—Building | 1982 | 29 | -17 | 7.1 | 6.0 | 5.5 | 5.1 | 0.6 |
| | Toll | 1982 | 25 | 41 | 8.1 | 6.9 | 6.2 | 5.8 | -1.6 |
| 242.2 | Underground Cable | | | | | | | | |
| | Exchange | 1982 | 45 | 26 | 3.5 | 3.0 | 2.8 | 2.7 | -0.6 |
| | Toll | 1982 | 36 | 30 | 4.3 | 3.7 | 3.4 | 3.3 | -0.8 |
| 242.3 | Buried Cable | | | | | | | | |
| | Exchange | 1982 | 36 | 1 | 3.7 | 3.5 | 3.3 | 3.3 | 0. |
| | Toll | 1982 | 36 | 1 | 3.7 | 3.5 | 3.3 | 3.3 | 0. |
| 242.4 | Submarine Cable | | | | | | | | |
| | Exchange | 1982 | 30 | 0 | 9.3 | 7.0 | 5.9 | 5.3 | 0. |
| | Toll | 1982 | 30 | 0 | 9.3 | 7.0 | 5.9 | 5.3 | 0. |
| 244 | Underground Conduit | 1982 | 66 | -7 | 1.7 | 1.7 | 1.7 | 1.6 | 0.1 |

*ELG rates are effective January 1 of the year shown in column b and are to be applied to plant additions for that year and subsequent years.

*FEDERAL COMMUNICATIONS COMMISSION*
*Schedule of Annual Percentages of Depreciation*
*Calculated under the Equal Life Group Methodology for*
*THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY—WYOMING*

| *Acct. No.* | *Class or Subclass of Plant (a)* | *Year (b)** | *Proj. Life (c)* | *Fut. Net Salv. (d)* | *Original Cost Rates Age at Beginning of Year 0.0 (e)* | *0.5 (f)* | *1.5 (g)* | *2.5 (h)* | *Net Salv. Rate (i = −d/c)* |
|---|---|---|---|---|---|---|---|---|---|
| | | | (Yrs.) | (%) | (%) | (%) | (%) | (%) | (%) |
| 221 | Central Office Equipment | | | | | | | | |
| | Non-Ded. Circuit | 1983 | 18 | 9 | 10.3 | 9.7 | 9.0 | 8.3 | -0.5 |
| | DDS Circuit | 1983 | 11 | -4 | 16.6 | 15.1 | 13.3 | 11.8 | 0.4 |
| | Radio | 1983 | 20 | -6 | 7.2 | 6.4 | 6.0 | 5.7 | 0.3 |
| | Electronic | 1983 | 23 | 5 | 7.6 | 6.4 | 5.8 | 5.5 | -0.2 |
| 241 | Pole Lines | 1982 | 8 | -35 | 33.0 | 21.4 | 16.3 | 13.6 | 4.4 |
| 242.1 | Aerial Cable | | | | | | | | |
| | Exchange—Other | 1982 | 21 | -6 | 7.4 | 7.2 | 7.0 | 6.7 | 0.3 |
| | Exchange—Building | 1982 | 21 | -5 | 7.4 | 7.2 | 7.0 | 6.7 | 0.2 |
| | Toll | 1982 | 20 | 33 | 7.7 | 7.6 | 7.3 | 7.0 | -1.7 |
| 242.2 | Underground Cable | | | | | | | | |
| | Exchange | 1982 | 45 | -9 | 3.8 | 3.4 | 3.1 | 3.0 | 0.2 |
| | Toll | 1982 | 33 | 30 | 5.1 | 4.5 | 4.2 | 4.0 | -0.9 |
| 242.3 | Buried Cable | | | | | | | | |
| | Exchange | 1982 | 35 | -4 | 4.5 | 4.3 | 4.1 | 4.0 | 0.1 |
| | Toll | 1982 | 35 | 5 | 4.5 | 4.3 | 4.1 | 4.0 | -0.1 |
| 242.4 | Submarine Cable | | | | | | | | |
| | Exchange | 1982 | 30 | 0 | 9.3 | 7.0 | 5.9 | 5.3 | 0. |
| | Toll | 1982 | 30 | 0 | 9.3 | 7.0 | 5.9 | 5.3 | 0. |
| 244 | Underground Conduit | 1982 | 66 | -7 | 1.7 | 1.6 | 1.6 | 1.6 | 0.1 |

*ELG rates are effective January 1 of the year shown in column b and are to be applied to plant additions for that year and subsequent years.

*FEDERAL COMMUNICATIONS COMMISSION*
*Schedule of Annual Percentages of Depreciation*
*Calculated under the Equal Life Group Methodology for*
*NEW ENGLAND TELEPHONE AND TELEGRAPH COMPANY—MAINE*

| *Acct. No.* | *Class or Subclass of Plant (a)* | *Year (b)** | *Proj. Life (c)* | *Fut. Net Salv. (d)* | *Original Cost Rates Age at Beginning of Year 0.0 (e)* | *0.5 (f)* | *1.5 (g)* | *2.5 (h)* | *Net Salv. Rate (i = −d/c)* |
|---|---|---|---|---|---|---|---|---|---|
| | | | (Yrs.) | (%) | (%) | (%) | (%) | (%) | (%) |
| 221 | Central Office Equipment | | | | | | | | |
| | Non-Ded. Circuit | 1983 | 20 | 2 | 7.6 | 6.8 | 6.4 | 6.2 | -0.1 |
| | DDS Circuit | 1983 | 10.9 | -4 | 13.4 | 11.9 | 11.0 | 10.4 | 0.4 |
| | Radio | 1983 | 15 | -5 | 13.5 | 13.3 | 12.2 | 10.5 | 0.3 |
| | Electronic | 1983 | 25 | 0 | 8.2 | 6.6 | 5.8 | 5.4 | 0. |
| 241 | Pole Lines | 1982 | 35 | -60 | 6.2 | 5.1 | 4.6 | 4.3 | 1.7 |
| 242.1 | Aerial Cable | | | | | | | | |
| | Exchange | 1982 | 34 | -20 | 3.8 | 3.7 | 3.7 | 3.6 | 0.6 |
| | Toll | 1982 | 35 | 36 | 3.7 | 3.7 | 3.6 | 3.6 | -1.0 |
| 242.2 | Underground Cable | | | | | | | | |
| | Exchange | 1982 | 45 | -14 | 4.6 | 4.1 | 3.8 | 3.7 | 0.3 |
| | Toll | 1982 | 40 | 18 | 3.6 | 3.5 | 3.3 | 3.3 | -0.5 |
| 242.3 | Buried Cable | | | | | | | | |
| | Exchange | 1982 | 30 | -5 | 5.7 | 5.1 | 4.8 | 4.6 | 0.2 |
| | Toll | 1982 | 35 | -5 | 4.1 | 3.9 | 3.8 | 3.7 | 0.1 |
| 242.4 | Submarine Cable | | | | | | | | |
| | Exchange | 1982 | 25 | -6 | 4.4 | 4.4 | 4.3 | 4.3 | 0.2 |
| | Toll | 1982 | 30 | -10 | 3.6 | 3.6 | 3.6 | 3.6 | 0.3 |
| 244 | Underground Conduit | 1982 | 70 | -4 | 1.6 | 1.6 | 1.6 | 1.6 | 0.1 |

*ELG rates are effective January 1 of the year shown in column b and are to be applied to plant additions for that year and subsequent years.

*FEDERAL COMMUNICATIONS COMMISSION*
*Schedule of Annual Percentages of Depreciation*
*Calculated under the Equal Life Group Methodology for*
*NEW ENGLAND TELEPHONE AND TELEGRAPH COMPANY—*
*MASSACHUSETTS*

| *Acct. No.* | *Class or Subclass of Plant (a)* | *Year (b)** | *Proj. Life (c)* | *Fut. Net Salv. (d)* | *Original Cost Rates* Age at Beginning of Year 0.0 (e) | 0.5 (f) | 1.5 (g) | 2.5 (h) | *Net Salv. Rate (i = −d/c)* |
|---|---|---|---|---|---|---|---|---|---|
| | | | (Yrs.) | (%) | (%) | (%) | (%) | (%) | (%) |
| 221 | Central Office Equipment | | | | | | | | |
| | Non-Ded. Circuit | 1983 | 19 | 4 | 10.9 | 8.4 | 7.2 | 6.5 | -0.2 |
| | DDS Circuit | 1983 | 14.9 | -3 | 11.9 | 9.9 | 8.8 | 8.2 | 0.2 |
| | Radio | 1983 | 15 | -1 | 10.5 | 8.9 | 8.1 | 7.7 | 0.1 |
| | Electronic | 1983 | 24 | 0 | 8.5 | 6.8 | 6.0 | 5.6 | 0. |
| 241 | Pole Lines | 1982 | 38 | -60 | 7.2 | 5.6 | 4.8 | 4.3 | 1.6 |
| 242.1 | Aerial Cable | | | | | | | | |
| | Exchange | 1982 | 30 | -21 | 4.8 | 4.6 | 4.4 | 4.3 | 0.7 |
| | Toll | 1982 | 35 | 40 | 3.7 | 3.7 | 3.6 | 3.6 | -1.1 |
| 242.2 | Underground Cable | | | | | | | | |
| | Exchange | 1982 | 55 | 29 | 3.8 | 3.4 | 3.2 | 3.1 | -0.5 |
| | Toll | 1982 | 41 | 21 | 3.5 | 3.4 | 3.3 | 3.2 | -0.5 |
| 242.3 | Buried Cable | | | | | | | | |
| | Exchange | 1982 | 35 | -6 | 4.7 | 4.3 | 4.1 | 3.9 | 0.2 |
| | Toll | 1982 | 35 | -5 | 4.1 | 3.9 | 3.8 | 3.7 | 0.1 |
| 242.4 | Submarine Cable | | | | | | | | |
| | Exchange | 1982 | 32 | -16 | 3.4 | 3.4 | 3.4 | 3.4 | 0.5 |
| | Toll | 1982 | 38 | -15 | 2.9 | 2.9 | 2.8 | 2.8 | 0.4 |
| 244 | Underground Conduit | 1982 | 70 | -4 | 1.6 | 1.6 | 1.6 | 1.6 | 0.1 |

*ELG rates are effective January 1 of the year shown in column b and are to be applied to plant additions for that year and subsequent years.

*FEDERAL COMMUNICATIONS COMMISSION*
*Schedule of Annual Percentages of Depreciation*
*Calculated under the Equal Life Group Methodology for*
*NEW ENGLAND TELEPHONE AND TELEGRAPH COMPANY—NEW HAMPSHIRE*

| *Acct. No.* | *Class or Subclass of Plant (a)* | *Year (b)** | *Proj. Life (c)* | *Fut. Net Salv. (d)* | *Original Cost Rates* Age at Beginning of Year 0.0 (e) | 0.5 (f) | 1.5 (g) | 2.5 (h) | *Net Salv. Rate (i = −d/c)* |
|---|---|---|---|---|---|---|---|---|---|
| | | | (Yrs.) | (%) | (%) | (%) | (%) | (%) | (%) |
| 221 | Central Office Equipment | | | | | | | | |
| | Non-Ded. Circuit | 1983 | 20 | 1 | 8.7 | 7.1 | 6.3 | 5.9 | -0.1 |
| | DDS Circuit | 1983 | 10.9 | -4 | 15.7 | 12.9 | 11.4 | 10.5 | 0.4 |
| | Radio | 1983 | 15 | -5 | 8.0 | 7.6 | 7.4 | 7.3 | 0.3 |
| | Electronic | 1983 | 25 | 0 | 8.2 | 6.6 | 5.8 | 5.4 | 0. |
| 241 | Pole Lines | 1982 | 33 | -50 | 7.8 | 6.2 | 5.3 | 4.9 | 1.5 |
| 242.1 | Aerial Cable | | | | | | | | |
| | Exchange | 1982 | 29 | -19 | 4.0 | 4.0 | 4.0 | 4.0 | 0.7 |
| | Toll | 1982 | 35 | 11 | 3.7 | 3.7 | 3.6 | 3.6 | -0.3 |
| 242.2 | Underground Cable | | | | | | | | |
| | Exchange | 1982 | 45 | -9 | 4.6 | 4.1 | 3.8 | 3.7 | 0.2 |
| | Toll | 1982 | 41 | 4 | 3.5 | 3.4 | 3.3 | 3.2 | -0.1 |
| 242.3 | Buried Cable | | | | | | | | |
| | Exchange | 1982 | 30 | -5 | 4.6 | 4.6 | 4.6 | 4.5 | 0.2 |
| | Toll | 1982 | 35 | -5 | 4.1 | 3.9 | 3.8 | 3.7 | 0.1 |
| 242.4 | Submarine Cable | | | | | | | | |
| | Exchange | 1982 | 30 | -6 | 3.6 | 3.6 | 3.6 | 3.6 | 0.2 |
| | Toll | 1982 | 36 | -6 | 3.1 | 3.1 | 3.0 | 3.0 | 0.2 |
| 244 | Underground Conduit | 1982 | 70 | -5 | 1.6 | 1.6 | 1.6 | 1.6 | 0.1 |

*ELG rates are effective January 1 of the year shown in column b and are to be applied to plant additions for that year and subsequent years.

*FEDERAL COMMUNICATIONS COMMISSION*
*Schedule of Annual Percentages of Depreciation*
*Calculated under the Equal Life Group Methodology for*
*NEW ENGLAND TELEPHONE AND TELEGRAPH COMPANY—*
*RHODE ISLAND*

| Acct. No. | Class or Subclass of Plant (a) | Year (b)* | Proj. Life (c) | Fut. Net Salv. (d) | Original Cost Rates Age at Beginning of Year 0.0 (e) | 0.5 (f) | 1.5 (g) | 2.5 (h) | Net Salv. Rate (i = −d/c) |
|---|---|---|---|---|---|---|---|---|---|
| | | | (Yrs.) | (%) | (%) | (%) | (%) | (%) | (%) |
| 221 | Central Office Equipment | | | | | | | | |
| | Non-Ded. Circuit | 1983 | 19 | 3 | 11.0 | 8.3 | 7.1 | 6.4 | -0.2 |
| | DDS Circuit | 1983 | 10.9 | -4 | 17.5 | 12.9 | 10.8 | 9.8 | 0.4 |
| | Radio | 1983 | 18 | -10 | 6.3 | 6.3 | 6.3 | 6.3 | 0.6 |
| | Electronic | 1983 | 25 | -3 | 8.2 | 6.6 | 5.8 | 5.4 | 0.1 |
| 241 | Pole Lines | 1982 | 40 | -58 | 6.0 | 4.8 | 4.2 | 3.8 | 1.5 |
| 242.1 | Aerial Cable | | | | | | | | |
| | Exchange | 1982 | 34 | -22 | 3.8 | 3.7 | 3.7 | 3.6 | 0.6 |
| | Toll | 1982 | 35 | 25 | 3.7 | 3.7 | 3.6 | 3.6 | -0.7 |
| 242.2 | Underground Cable | | | | | | | | |
| | Exchange | 1982 | 45 | 6 | 4.6 | 4.1 | 3.8 | 3.7 | -0.1 |
| | Toll | 1982 | 42 | 31 | 3.5 | 3.3 | 3.2 | 3.1 | -0.7 |
| 242.3 | Buried Cable | | | | | | | | |
| | Exchange | 1982 | 30 | -5 | 4.8 | 4.8 | 4.8 | 4.7 | 0.2 |
| | Toll | 1982 | 35 | -5 | 4.1 | 3.9 | 3.8 | 3.7 | 0.1 |
| 242.4 | Submarine Cable | | | | | | | | |
| | Exchange | 1982 | 32 | -5 | 3.5 | 3.5 | 3.5 | 3.4 | 0.2 |
| | Toll | 1982 | 37 | -6 | 3.0 | 3.0 | 3.0 | 2.9 | 0.2 |
| 244 | Underground Conduit | 1982 | 70 | -5 | 1.6 | 1.6 | 1.6 | 1.6 | 0.1 |

*ELG rates are effective January 1 of the year shown in column b and are to be applied to plant additions for that year and subsequent years.

*FEDERAL COMMUNICATIONS COMMISSION*
*Schedule of Annual Percentages of Depreciation*
*Calculated under the Equal Life Group Methodology for*
*NEW ENGLAND TELEPHONE AND TELEGRAPH COMPANY—VERMONT*

| *Acct. No.* | *Class or Subclass of Plant (a)* | *Year (b)** | *Proj. Life (c)* | *Fut. Net Salv. (d)* | *Original Cost Rates Age at Beginning of Year 0.0 (e)* | *0.5 (f)* | *1.5 (g)* | *2.5 (h)* | *Net Salv. Rate (i = −d/c)* |
|---|---|---|---|---|---|---|---|---|---|
| | | | (Yrs.) | (%) | (%) | (%) | (%) | (%) | (%) |
| 221 | Central Office Equipment | | | | | | | | |
| | Non-Ded. Circuit | 1983 | 20 | 2 | 8.4 | 6.8 | 6.1 | 5.7 | -0.1 |
| | DDS Circuit | 1983 | 11.1 | -4 | 14.0 | 11.3 | 10.1 | 9.5 | 0.4 |
| | Radio | 1983 | 18 | -5 | 7.6 | 6.8 | 6.4 | 6.2 | 0.3 |
| | Electronic | 1983 | 25 | 0 | 8.2 | 6.6 | 5.8 | 5.4 | 0. |
| 241 | Pole Lines | 1982 | 30 | -50 | 9.5 | 7.1 | 5.9 | 5.3 | 1.7 |
| 242.1 | Aerial Cable | | | | | | | | |
| | Exchange | 1982 | 32 | -21 | 4.3 | 4.1 | 3.9 | 3.8 | 0.7 |
| | Toll | 1982 | 35 | 11 | 3.7 | 3.7 | 3.6 | 3.6 | -0.3 |
| 242.2 | Underground Cable | | | | | | | | |
| | Exchange | 1982 | 45 | -4 | 4.6 | 4.1 | 3.8 | 3.7 | 0.1 |
| | Toll | 1982 | 41 | 0 | 3.5 | 3.4 | 3.3 | 3.2 | 0. |
| 242.3 | Buried Cable | | | | | | | | |
| | Exchange | 1982 | 33 | -5 | 5.6 | 4.7 | 4.2 | 3.9 | 0.2 |
| | Toll | 1982 | 35 | -5 | 4.1 | 3.9 | 3.8 | 3.7 | 0.1 |
| 242.4 | Submarine Cable | | | | | | | | |
| | Exchange | 1982 | 31 | -15 | 3.6 | 3.6 | 3.6 | 3.5 | 0.5 |
| | Toll | 1982 | 37 | -15 | 3.0 | 3.0 | 3.0 | 3.0 | 0.4 |
| 244 | Underground Conduit | 1982 | 70 | -5 | 1.6 | 1.6 | 1.6 | 1.6 | 0.1 |

*ELG rates are effective January 1 of the year shown in column b and are to be applied to plant additions for that year and subsequent years.

*FEDERAL COMMUNICATIONS COMMISSION*
*Schedule of Annual Percentages of Depreciation*
*Calculated under the Equal Life Group Methodology for*
*NEW JERSEY BELL TELEPHONE COMPANY*

| *Acct. No.* | *Class or Subclass of Plant (a)* | *Year (b)** | *Proj. Life (c)* | *Fut. Net Salv. (d)* | *Original Cost Rates Age at Beginning of Year 0.0 (e)* | *0.5 (f)* | *1.5 (g)* | *2.5 (h)* | *Net Salv. Rate (i = −d/c)* |
|---|---|---|---|---|---|---|---|---|---|
| | | | (Yrs.) | (%) | (%) | (%) | (%) | (%) | (%) |
| 221 | Central Office Equipment | | | | | | | | |
| | Non-Ded. Circuit | 1982 | 17.5 | 0 | 9.5 | 8.4 | 7.7 | 7.3 | 0. |
| | DDS Circuit | 1982 | 13.1 | -4 | 13.2 | 11.3 | 10.2 | 9.4 | 0.3 |
| | Radio | 1982 | 17 | 4 | 7.0 | 7.0 | 6.9 | 6.8 | -0.2 |
| | Electronic | 1983 | 21 | 1 | 8.3 | 7.0 | 6.3 | 6.0 | 0. |
| 241 | Pole Lines | 1982 | 40 | -58 | 7.4 | 5.5 | 4.6 | 4.1 | 1.5 |
| 242.1 | Aerial Cable | | | | | | | | |
| | Subscriber | 1982 | 28 | -11 | 5.9 | 5.3 | 5.0 | 4.8 | 0.4 |
| | Trunk | 1982 | 29 | 54 | 7.1 | 5.9 | 5.3 | 5.0 | -1.9 |
| 242.2 | Underground Cable | | | | | | | | |
| | Subscriber | 1982 | 40 | 2 | 4.6 | 3.9 | 3.6 | 3.4 | -0.1 |
| | Trunk | 1982 | 32 | 28 | 4.3 | 4.0 | 3.9 | 3.8 | -0.9 |
| 242.3 | Buried Cable | 1982 | 35 | -5 | 6.3 | 4.9 | 4.3 | 3.9 | 0.1 |
| 242.4 | Submarine Cable | 1982 | 30 | -13 | 5.4 | 4.9 | 4.6 | 4.4 | 0.4 |
| 244 | Underground Conduit | 1982 | 70 | -5 | 1.6 | 1.6 | 1.6 | 1.5 | 0.1 |

*ELG rates are effective January 1 of the year shown in column b and are to be applied to plant additions for that year and subsequent years.

*FEDERAL COMMUNICATIONS COMMISSION*
*Schedule of Annual Percentages of Depreciation*
*Calculated under the Equal Life Group Methodology for*
*PACIFIC NORTHWEST BELL TELEPHONE COMPANY—IDAHO*

| *Acct. No.* | *Class or Subclass of Plant (a)* | *Year (b)** | *Proj. Life (c)* | *Fut. Net Salv. (d)* | *Original Cost Rates — Age at Beginning of Year 0.0 (e)* | *0.5 (f)* | *1.5 (g)* | *2.5 (h)* | *Net Salv. Rate (i = −d/c)* |
|---|---|---|---|---|---|---|---|---|---|
| | | | (Yrs.) | (%) | (%) | (%) | (%) | (%) | (%) |
| 221 | Central Office Equipment | | | | | | | | |
| | Non-Ded. Circuit | 1983 | 19 | -10 | 8.8 | 8.0 | 7.4 | 7.0 | 0.5 |
| | DDS Circuit | 1983 | 12.1 | -4 | 13.5 | 12.1 | 11.1 | 10.2 | 0.3 |
| | Radio | 1983 | 15 | -9 | 9.6 | 9.3 | 8.8 | 8.4 | 0.6 |
| | Electronic | 1983 | 21 | 6 | 8.3 | 7.0 | 6.3 | 6.0 | -0.3 |
| 241 | Pole Lines | 1982 | 12 | -19 | 14.0 | 14.0 | 13.5 | 12.1 | 1.6 |
| 242.1 | Aerial Cable | | | | | | | | |
| | Exchange | 1982 | 24 | 5 | 13.0 | 9.6 | 7.9 | 7.0 | -0.2 |
| | Toll | 1982 | 9 | -4 | 18.4 | 18.4 | 16.9 | 14.2 | 0.4 |
| 242.2 | Underground Cable | | | | | | | | |
| | Exchange | 1982 | 45 | -7 | 4.1 | 3.4 | 3.1 | 2.9 | 0.2 |
| | Toll | 1982 | 40 | 9 | 3.7 | 3.3 | 3.1 | 3.0 | -0.2 |
| 242.3 | Buried Cable | | | | | | | | |
| | Exchange | 1982 | 35 | -8 | 3.9 | 3.9 | 3.9 | 3.9 | 0.2 |
| | Toll | 1982 | 40 | -3 | 4.1 | 3.6 | 3.3 | 3.2 | 0.1 |
| 242.4 | Submarine Cable | | | | | | | | |
| | Exchange | 1982 | 23 | 0 | 11.5 | 8.6 | 7.2 | 6.4 | 0. |
| | Toll | 1982 | 25 | 0 | 10.8 | 8.1 | 6.8 | 6.1 | 0. |
| 244 | Underground Conduit | 1982 | 65 | -5 | 1.7 | 1.7 | 1.7 | 1.7 | 0.1 |

*ELG rates are effective January 1 of the year shown in column b and are to be applied to plant additions for that year and subsequent years.

*FEDERAL COMMUNICATIONS COMMISSION*
*Schedule of Annual Percentages of Depreciation*
*Calculated under the Equal Life Group Methodology for*
*PACIFIC NORTHWEST BELL TELEPHONE COMPANY—OREGON*

| Acct. No. | Class or Subclass of Plant (a) | Year (b)* | Proj. Life (c) | Fut. Net Salv. (d) | Original Cost Rates Age at Beginning of Year 0.0 (e) | 0.5 (f) | 1.5 (g) | 2.5 (h) | Net Salv. Rate (i = −d/c) |
|---|---|---|---|---|---|---|---|---|---|
| | | | (Yrs.) | (%) | (%) | (%) | (%) | (%) | (%) |
| 221 | Central Office Equipment | | | | | | | | |
| | Non-Ded. Circuit | 1982 | 17 | 5 | 11.4 | 10.5 | 9.5 | 8.7 | -0.3 |
| | DDS Circuit | 1982 | 13 | -4 | 13.3 | 11.8 | 10.7 | 9.9 | 0.3 |
| | Radio | 1982 | 18 | 4 | 8.3 | 8.3 | 8.3 | 8.0 | -0.2 |
| | Electronic | 1982 | 20 | 0 | 8.6 | 7.3 | 6.6 | 6.2 | 0. |
| 241 | Pole Lines | 1982 | 23 | -27 | 13.9 | 9.7 | 7.8 | 6.8 | 1.2 |
| 242.1 | Aerial Cable | | | | | | | | |
| | Exchange | 1982 | 22 | -8 | 14.0 | 10.2 | 8.4 | 7.4 | 0.4 |
| | Toll | 1982 | 23 | 24 | 12.7 | 9.4 | 7.8 | 7.0 | -1.0 |
| 242.2 | Underground Cable | | | | | | | | |
| | Exchange | 1982 | 41 | -10 | 4.6 | 3.8 | 3.4 | 3.2 | 0.2 |
| | Toll | 1982 | 39 | 25 | 4.7 | 3.9 | 3.5 | 3.3 | -0.6 |
| 242.3 | Buried Cable | | | | | | | | |
| | Exchange | 1982 | 35 | -13 | 3.9 | 3.9 | 3.9 | 3.9 | 0.4 |
| | Toll | 1982 | 38 | -6 | 3.6 | 3.6 | 3.6 | 3.6 | 0.2 |
| 242.4 | Submarine Cable | | | | | | | | |
| | Exchange | 1982 | 22 | 0 | 12.0 | 8.9 | 7.4 | 6.6 | 0. |
| | Toll | 1982 | 25 | 0 | 10.8 | 8.1 | 6.8 | 6.1 | 0. |
| 244 | Underground Conduit | 1982 | 65 | -5 | 1.7 | 1.7 | 1.7 | 1.7 | 0.1 |

*ELG rates are effective January 1 of the year shown in column b and are to be applied to plant additions for that year and subsequent years.

*FEDERAL COMMUNICATIONS COMMISSION*
*Schedule of Annual Percentages of Depreciation*
*Calculated under the Equal Life Group Methodology for*
*PACIFIC NORTHWEST BELL TELEPHONE COMPANY—WASHINGTON*

| *Acct. No.* | *Class or Subclass of Plant (a)* | *Year (b)** | *Proj. Life (c)* | *Fut. Net Salv. (d)* | *Original Cost Rates* — *Age at Beginning of Year* 0.0 (e) | 0.5 (f) | 1.5 (g) | 2.5 (h) | *Net Salv. Rate (i = −d/c)* |
|---|---|---|---|---|---|---|---|---|---|
| | | | (Yrs.) | (%) | (%) | (%) | (%) | (%) | (%) |
| 221 | Central Office Equipment | | | | | | | | |
| | Non-Ded. Circuit | 1983 | 18 | 9 | 11.6 | 10.6 | 9.5 | 8.7 | -0.5 |
| | DDS Circuit | 1983 | 12.1 | -4 | 13.5 | 12.1 | 11.1 | 10.2 | 0.3 |
| | Radio | 1983 | 21 | -4 | 7.3 | 7.0 | 6.7 | 6.4 | 0.2 |
| | Electronic | 1983 | 21 | 2 | 8.3 | 7.0 | 6.3 | 6.0 | -0.1 |
| 241 | Pole Lines | 1982 | 28 | -55 | 10.8 | 7.9 | 6.5 | 5.8 | 2.0 |
| 242.1 | Aerial Cable | | | | | | | | |
| | Exchange | 1982 | 22 | -6 | 14.0 | 10.2 | 8.4 | 7.4 | 0.3 |
| | Toll | 1982 | 23 | 43 | 13.3 | 9.8 | 8.1 | 7.1 | -1.9 |
| 242.2 | Underground Cable | | | | | | | | |
| | Exchange | 1982 | 43 | -6 | 4.3 | 3.6 | 3.2 | 3.0 | 0.1 |
| | Toll | 1982 | 39 | 54 | 4.8 | 3.9 | 3.5 | 3.3 | -1.4 |
| 242.3 | Buried Cable | | | | | | | | |
| | Exchange | 1982 | 35 | -12 | 3.9 | 3.9 | 3.9 | 3.9 | 0.3 |
| | Toll | 1982 | 40 | -6 | 3.5 | 3.5 | 3.5 | 3.4 | 0.2 |
| 242.4 | Submarine Cable | | | | | | | | |
| | Exchange | 1982 | 22 | -4 | 12.0 | 8.9 | 7.4 | 6.6 | 0.2 |
| | Toll | 1982 | 25 | -4 | 10.8 | 8.1 | 6.8 | 6.1 | 0.2 |
| 244 | Underground Conduit | 1982 | 66 | -9 | 1.7 | 1.7 | 1.7 | 1.7 | 0.1 |

*ELG rates are effective January 1 of the year shown in column b and are to be applied to plant additions for that year and subsequent years.

*FEDERAL COMMUNICATIONS COMMISSION*
*Schedule of Annual Percentages of Depreciation*
*Calculated under the Equal Life Group Methodology for*
*THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY*

| *Acct. No.* | *Class or Subclass of Plant* (a) | *Year* (b)* | *Proj. Life* (c) | *Fut. Net Salv.* (d) | *Original Cost Rates* — *Age at Beginning of Year* 0.0 (e) | 0.5 (f) | 1.5 (g) | 2.5 (h) | *Net Salv. Rate* (i = −d/c) |
|---|---|---|---|---|---|---|---|---|---|
| | | | (Yrs.) | (%) | (%) | (%) | (%) | (%) | (%) |
| 221 | Central Office Equipment | | | | | | | | |
| | Non-Ded. Circuit | 1983 | 17 | -1 | 9.0 | 8.3 | 7.8 | 7.5 | 0.1 |
| | DDS Circuit | 1983 | 12.9 | -4 | 11.5 | 10.8 | 10.1 | 9.5 | 0.3 |
| | Radio | 1983 | 20 | -7 | 10.8 | 8.5 | 7.4 | 6.7 | 0.4 |
| | Electronic | 1983 | 21 | 5 | 8.3 | 7.0 | 6.3 | 6.0 | -0.2 |
| 241 | Pole Lines | 1982 | 32 | -67 | 9.8 | 7.1 | 5.8 | 5.2 | 2.1 |
| 242.1 | Aerial Cable | | | | | | | | |
| | Exchange | 1982 | 27 | -21 | 8.2 | 6.7 | 6.0 | 5.5 | 0.8 |
| | Toll | 1982 | 20 | 34 | 13.9 | 9.7 | 7.8 | 6.8 | -1.7 |
| 242.2 | Underground Cable | | | | | | | | |
| | Exchange | 1982 | 43 | -3 | 5.4 | 4.4 | 3.9 | 3.6 | 0.1 |
| | Toll | 1982 | 35 | 22 | 4.1 | 3.9 | 3.8 | 3.7 | -0.6 |
| 242.3 | Buried Cable | | | | | | | | |
| | Exchange | 1982 | 32 | -15 | 6.8 | 5.6 | 5.0 | 4.6 | 0.5 |
| | Toll | 1982 | 36 | -6 | 4.5 | 3.9 | 3.6 | 3.5 | 0.2 |
| 242.4 | Submarine Cable | | | | | | | | |
| | Exchange | 1982 | 33 | -53 | 5.3 | 4.6 | 4.3 | 4.1 | 1.6 |
| 244 | Underground Conduit | 1982 | 65 | -20 | 2.1 | 2.0 | 1.9 | 1.8 | 0.3 |

*ELG rates are effective January 1 of the year shown in column b and are to be applied to plant additions for that year and subsequent years.

FCC 82–543

**BEFORE THE**

# FEDERAL COMMUNICATIONS COMMISSION

**WASHINGTON, D.C. 20554**

In the Matter of

The Prescription of Revised Percentages of Depreciation pursuant to Section 220(b) of the Communications Act of 1934, as amended for:

General Telephone Company of the Northwest, Inc. General Telephone Company of the Southeast Hawaiian Telephone Company

## ORDER

Adopted December 8, 1982; Released: December 14, 1982

BY THE COMMISSION:

## *I. INTRODUCTION*

1. Section 220(b) of the Communications Act of 1934, as amended, 47 U.S.C. §220(b), states that the Commission shall, as soon as practicable, prescribe classes of property for which depreciation charges may be included in operating expenses and the percentages of depreciation which shall be charged to each of the classes. It also states that the Commission may, when it deems necessary, modify the classes and percentages so prescribed.

2. By this order we prescribe revised percentages of depreciation (depreciation rates) for the three GTE companies listed above using both the straight line vintage group remaining-life (remaining-life) and straight line equal life group (SLELG) methods.

## *II. BACKGROUND*

A. *Remaining-Life Method*

3. Prior to 1981, we had only used the straight line vintage group whole-life (whole-life) depreciation method in prescribing depreciation rates for telephone companies' plant. Using this method, we had attempted to determine the appropriate depreciation accruals applicable to each year's operations using current estimates of life and net salvage. As estimates of life and net salvage changed over time, the whole-life rates were changed in accordance with these changes in estimates. However, using whole-life concepts, no attempt was made to adjust the rates to allow for reserve surpluses or deficits resulting from the cumulative over- or under-estimation of life and net salvage factors. This changed with our final decision in FCC Docket No. 20188, 83 FCC 2d 267 (1980), *reconsideration*, 87 FCC 2d 916 (1981), where we revised Part 31 of the Rules and Regulations, the "Uniform System of Accounts for Class A and B Telephone Companies," to allow the use of the remaining-life depreciation method. The remaining-life method is designed to distribute the unrecovered cost (original cost less the sum of the depreciation reserve and future net salvage) of a group of asserts over its estimated average life expectancy; thus, this procedure includes an adjustment which allocates any reserve deficit or surplus over the estimated average remaining life.

4. We directed the staff to phase in the implementation of remaining-life depreciation rates in conjunction with the normal triennial represcription cycle (see paragraph 10). For GTE, implementation began with the companies that were regularly scheduled for review in 1981. Those companies submitted studies requesting revised depreciation rates using the remaining-life method. After a complete review, we adopted remaining-life depreciation rates for those companies in January. *See* FCC 82–40, 88 FCC 2d 1354 (1982). Remaining-life rates for the carriers normally scheduled for review in 1982 (see the list on page 1 of this order) were reviewed in detail this year. Our findings and conclusions regarding these rates are discussed beginning in paragraph 16.

B. *Straight Line Equal Life Group Method*

5. In Docket No. 20188, we also amended our rules to permit the use of the SLELG depreciation method for new additions to plant as an alternative to the straight line vintage group (SLVG) method, provided that adequate data is available for the proper application of the method.

6. The primary differences between the SLELG and SLVG methods lie in the definition of the basic depreciation groups and in the approach each takes in spreading the original cost of assets comprising the basic groups over their estimated average service lives. While SLVG forms its basic groups by combining all units placed in one year (i.e., a vintage group), SLELG creates its basic groups by combining all units within each vintage group which share an equal life expectancy (i.e., an equal life group). While the SLVG method is designed to depreciate 100% of the

original cost of a vintage, on average, over the life cycle of each vintage, the SLELG method is designed to depreciate 100% of the original cost of each plant unit over its life. As a consequence, if projections are accurate, the SLELG method should allow for depreciation at a rate more representative of the actual consumption of units of property than SLVG. We concluded in Docket No. 20188 that the proper appiication and monitoring of this method would not only enhance the carrier's cash flow and present to all interested parties a more accurate and objective financial picture of the carrier's operations and capital requirements, but would also benefit their customers by encouraging innovation and the introduction of new technology.

7. Under both the SLVG and SLELG methods, retirement projections, service life estimates, and depreciation rates are normally determined, in part, through the use of survivor curves. These survivor curves define the relationship between the age of plant investment and the relative percentage expected to remain in service. Under the SLELG methodology, the survivor curves assume an added significance—that of defining the basic (equal life) groups. Under the SLVG method, most survivor curves have been selected only after the staff has completed detailed statistical analysis of historical retirement data. With the added significance of the survivor curves in the SLELG method, the availability and analysis of historical retirement data becomes even more important.

8. We recognized the importance of adequate data in Docket No. 20188 where we found that the SLELG method is acceptable, provided that:

> ". . . it is assured that adequate data is available for proper application of the method; that record keeping and reporting practices will enable monitoring of the reasonableness of the rate of allocation of both original cost and provisions for salvage and removal; that such allocation of original cost will achieve allocation over the service life of the property neither more nor less than 100% of the investment net of salvage value."

Accordingly, we directed the staff to take such measures as may be necessary to insure the measurability and accountability of the results under the SLELG method.

9. We further directed the staff to phase in the implementation of SLELG depreciation rates beginning with the outside plant accounts, followed by the central office equipment accounts, and concluding with all other plant accounts. In accordance with this directive, the staff reviewed SLELG rates for the outside plant accounts for four GTE companies last year, and in January of this year we adopted SLELG rates for new additions to most of the outside plant accounts for those carriers. *See* FCC 82–53, 88 FCC 2d 1567 (1982). In addition, SLELG rate proposals were reviewed for the outside plant accounts for most of the remaining GTE companies not scheduled to undergo a complete review of depreciation rates in 1982. As a result of that review, we adopted SLELG rates for

most of the outside plant accounts for those companies in July. *See* 82–354, 90 FCC 2d 997 (1982). SLELG rates for the central office equipment and outside plant accounts for the carriers listed on page 1 of this order were also reviewed in detail this year. Our findings and conclusions regarding these rates are discussed beginning in paragraph 16.

C. *Companies Scheduled for Review During 1982*

10. Since the late 1940's, the Commission has reviewed and prescribed the depreciation rates of approximately one-third of the larger FCC-subject telephone companies each year. In most cases we have prescribed rates for a carrier only after the following actions have been completed:

(1) Submittal of depreciation studied by the carrier.
(2) Staff review of the carrier's filings and studies in support of its proposed life and salvage factors.
(3) Independent staff analysis of such information as the carrier's plant mortality data and equipment retirement plans.
(4) Preparation of preliminary staff recommendations.
(5) Discussion of the carrier's filings and the preliminary Commission staff proposals at a conference in which representatives of the carrier and the staffs of the respective state commissions and the FCC participate (i.e., a three-way meeting).

11. In conjunction with the normal triennial represcription cycle, the three GTE companies whose rates are under consideration here submitted studies proposing new depreciation rates based upon revised life and salvage estimates, using the remaining-life method for all plant accounts and the SLELG method for new additions to the outside plant and central office equipment accounts. These studies were reviewed in detail by the staff, which then prepared its own preliminary life, net salvage, and rate proposals and forwarded them to the companies and the respective state commissions. Some of the state commissions prepared similar studies and recommendations. Three-way meetings were held at which the life, net salvage, and rate proposals of all three parties were thoroughly discussed.

12. Because this was the first time SLELG rates were being proposed for the central office equipment accounts, considerable analysis was required. As a result, in certain instances, the staff was unable to submit its SLELG recommendations prior to the three—way meeting. After completing its analysis and arriving at recommendations, the staff, on October 4, 1982, issued a public notice (Report No. 2967)[1] entitled, "Depreciaton Rate Prescriptions Proposed For Domestic Telephone Companies." This public notice summarized the FCC staff's proposals for new

[1] The public notice was erroneously dated October 1, 1982; however, October 4, 1982 is the correct issue date.

or revised depreciation rates and the change in depreciation expense that would result if those proposed depreciation rates were approved. The staff transmitted to each company and respective state commission a copy of the October 4 public notice, schedules containing the proposed remaining-life and SLELG rates, and a discussion of the staff analysis underlying the proposed SLELG depreciation rates. For all of the companies under review, agreements regarding the life and net salvage estimates were reached between our staff, the companies, and the respective state commission staffs.

## *III. SUMMARY OF COMMENTS*

13. Comments in response to the October 4 public notice were received from the North Carolina Utilities Commission and General Telephone Company of the Northwest.

14. General of the Northwest concurred with most of the staff's depreciation rate proposals; however, it took exception to the staff's failure to apply the SLELG method to the Automatic Switching (Analog) account in the states of Oregon and Washington.

15. The North Carolina Commission also concurred with the proposed remaining-life rates and noted that these rates were based on agreements reached between the FCC staff, the staff of the North Carolina Commission, and the General Telephone Company of the Southeast at the three-way meeting. North Carolina expressed its objection to the use of the SLELG method and noted that SLELG rates were not discussed at the three-way meeting.

## *IV. DISCUSSION OF ISSUES*

### A. *Effective Dates*

16. With few exceptions, prior to 1981 depreciation rates were prescribed retroactively to the beginning of the year in which they were filed. This appeared to be a reasonable practice inasmuch as the rates were based on depreciation studies as of that date (i.e., January 1). In 1981, with the initial implementation of the remaining-life and SLELG depreciation methods, many companies requested effective dates other than January 1, 1981. The companies maintained that, because of the controversy surrounding the Commission's approval of the new methods, it would be difficult to get approval of revenue rate increases from state commissions until the FCC had actually ordered new depreciation rates. The companies were also concerned that the states would not allow any retroactive revenue rates to match retroactive prescription of depreciation rates. After considering the regulatory and financial reporting aspects of this issue, we determined that, during this transitional period from whole-life to remaining-life and SLELG methods, we would allow the booking of the

new rates on the various effective dates proposed by the companies. *See* FCC 82–40, *supra.*

17. This year the companies filed for effective dates ranging from January 1, 1982 to January 1, 1983. They argued that Section 43.43(e) of our rules and our Order on Reconsideration in Docket No. 20188, *supra,* allow — at the discretion of the company — the booking of new depreciation rates retroactively to a date no earlier than the first of the year in which they were filed. Section 43.43(e) of our rules states:

> "Unless otherwise directed . . . proposed changes in depreciation rates shall be filed at least ninety (90) days prior to the last day of the month with respect to which the revised rates are first to be applied . . . and such rates *may be made retroactive* to a date not prior to the beginning of the year in which the filing is made." [Emphasis added.]

The companies also cited the Order on Reconsideration in Docket No. 20188, 87 FCC 2d 916 at paragraph 16, where we stated:

> ". . . retroactive application of the depreciation rates to the beginning of the year is permissive, not mandatory."

18. We maintain our belief that as a matter of sound accounting, depreciation rates should be applied on dates corresponding as closely as possible to the date of the underlying depreciation study. In Docket No. 20188, we determined that proper capital recovery is predicated, in large measure, upon the timely application of the correct depreciation rates. We also noted that, if inaccurate depreciation rates are applied, the resulting misstatement of operating expenses could harm present and potential investors and, ultimately, ratepayers by denying them and the regulators an accurate, objective financial picture of the companies' operations and capital requirements.

19. Nevertheless, during this period of continuing transition to the new methods, retroactive booking of depreciation rates would create uncertainties which, contrary to our intent, may deny some companies a reasonable opportunity to achieve capital recovery. The use of these new methods has resulted in both significant depreciation expense changes and in the requirement for additional company studies to support prescriptions. There has also been resistance on the part of some states to accept remaining-life and SLELG rates at all, and there may be a concomitant reluctance by certain state commissions to grant intrastate revenue rate increases until we actually prescribe depreciation rates using the new methods. We shall, therefore, accept the effective dates as filed by the companies.

B. *Use of SLELG*

20. In our decision in Docket No. 20188 we considered the arguments expressed by the parties for and against the use of the SLELG method and determined that, provided adequate data is available, the use of SLELG rates is appropriate. In the discussion in the Final Report and Order we found that the use of SLELG comports with the mandate of Section 1 of the Communications Act, "to make available . . . a rapid, efficient, nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges . . ." 47 U.S.C. § 151. We reaffirmed our decision allowing the use of SLELG in the Order on Reconsideration as well as in three prescription orders approved this year (i.e., FCC No. 82–53, 82–353, and 82–354). Nevertheless, the North Carolina Commission has again questioned whether the use of SLELG rates is warranted. Inasmuch as this state has not raised any new arguments or evidence regarding the use of SLELG rates, we have no basis to reverse our decision on this matter. Our rules, as amended in Docket No. 20188, clearly allow the use of SLELG for accounts in which adequate data is available to properly apply and monitor it. Therefore, we will allow its use.

C. *SLELG rates for Automatic Switching (Analog)*

21. General Telephone Company of the Northwest commented that, although the October 4 public notice did not reflect SLELG rates for new additions of analog electronic switching equipment in the states of Oregon and Washington, SLELG rates should be used. Our staff supports the use of SLELG rates for analog electronic switching equipment and, although it inadvertantly excluded these rates from the public notice, it supported the use of such rates at the three-way conference. Because these matters were discussed at the three-way meeting, and because the public notice clearly stated that SLELG rates were under consideration for central office equipment, the states had a reasonable opportunity to review the compny and FCC staff's SLELG proposals and submit their views for our consideration. We note that no comments objecting to the use of SLELG rates for central office equipment have been received from either state. We agree with the staff and the company that SLELG rates should be used for this account.

D. *Accounts for which SLELG Rates are not Recommended*

22. In our final decision in Docket No. 20188 we found that the SLELG method is acceptable if adequate data is available for the proper application of the method and if the carriers' record keeping practices will allow for the monitoring of the reasonableness of the rates. In each of the three SLELG prescription orders that we have approved to date (i.e., FCC No. 82–53, 88 FCC 2d 1567 (1982), FCC No. 82–353, 90 FCC 2d 964 (1982) and FCC No. 82–354, 90 FCC 2d 997 (1982)), we concluded that aged retire-

ment data is a minimum requirement for the proper application and monitoring of SLELG rates. We reaffirm our opinion that it is inappropriate to prescribe SLELG rates for accounts in which vintage retirement data is not maintained.

23. The staff proposes that new additions to the electromechanical switching accounts not be depreciated using the SLELG method. They argue that it is impractical to determine reasonable future survivor curves for these additions because these accounts consist of classes of equipment which are being rapidly retired from service. The staff purposes that new additions, as well as embedded plant, in these accounts be depreciated using the remaining-life method, and asserts that the remaining-life method will assure timely and complete recovery of capital. In its comments General of the Northwest concurred with the staff's depreciation proposals.

24. While we agree with the staff that the remaining-life method should be used for new additions to the electromechanical accounts, we also believe that to assure full and timely capital recovery on these short remaining life assets, some special measure is required. We therefore, direct the staff to update remaining-life depreciation rates for these accounts on an annual basis as requested by the companies or as is deemed necessary by the staff. These updates will assure that capital recovery is not unnecessarily deferred.

E. *Original Cost and Net Salvage Rates for SLELG*

25. We are only prescribig SLELG rates for the original cost portion for the first four years of new additions to most central office and outside plant accounts. These rates will be applied until the next triennial review of depreciation for these companies. At that time the actual results of the use of the SLELG method will be evaluated, and methods and rates will be modified as necessary.

26. Present carrier accounting practices do not allow carriers to accumulate net salvage data by vintage for all classes of plant. For example, retirement of a complete line of poles may involve removal of poles of several different vintages, but would normally result in a single aggregate cost of removal and salvage from reuse or sale. In this situation it is not feasible to allocate that cost of removal or salvage among the different vintages in a meaningful manner. For this reason, instead of prescribing net salvage depreciation rates for each vintage, we are prescribing a single net salvage depreciation rate which is to be applied to all new vintages until the next regular review. *See* FCC 82–53, FCC 82–353, and FCC 82–354.

F. *Accounts for which Remaining-Life Rates are not Recommended*

27. In FCC Docket No. 79–105, *supra*, we amended the accounting rules for station connections and ordered that all FCC-subject carriers

identify and assign the investment in Account 232, Station Connections, to at least two subclasses of plant—Station Connections-Inside Wire and Station Connections-Other. Our order required carriers to expense future costs associated with the Station Connections-Inside Wire subclass on a phase-in or flash-cut basis and to continue to capitalize future costs associated with the Station Connections-Other subclass. Because the retirement ratios and mortality dispersion patterns of the Station Connections-Other subclass are not similar to those for the account as a whole, the depreciation rates prescribed in the past for the entire Station Connections account could not be applied to the Station Connections-Other subclass. Instead, new rates had to be developed. The staff and GTE held discussions and concluded that, in most cases, a 5% depreciation rate should be used until there was sufficient data to ascertain specific mortality characteristics which could then be used to prescribe more precise depreciation rates for this subclass. Consequently, in 1981, the GTE companies filed requests for permission to adopt a 5% depreciation rate for the Station Connections-Other subclass. And, in January, in FCC Order No. 82–40, *supra*, we prescribed a 5% rate for all of the carriers whose rates are under consideration here.

28. In a separate proceeding initiated by an AT&T petition for rulemaking, (see our notice to proposed rulemaking in FCC Docket No. 82–679, 47, F.R. 44767) significant changes in the accounting rules for Station Connections-Other are under consideration. This proceeding will likely be concluded early in 1983. In the interim, we do not believe it prudent to change the existing 5% depreciation rate for this account.

29. In a few accounts with minimal plant balances, the use of the remaining-life method would result in negative depreciation rates because the reserve balances were in excess of service values (i.e., original cost less net salvage). The staff reviewed several of these instances and found that the primary cause was the transfer of plant from one account to another without a corresponding transfer of reserve amounts. The prescription of a negative depreciation rate is not consistant with generally accepted accounting principles. Therefore, we will adopt the use of a 0% depreciation rate for all accounts where the calculation of remaining-life depreciation rates would result in a negative rate. We recognize that this action does not totally resolve the problem (i.e., reserves greater than service values). However, the problem is technical in nature and can probably best be resolved at the staff level. We direct the staff to work with the carriers to determine what reserve transfers, if any, are required.

G. *Conclusion*

30. Having considered the positions set forth by the companies and respective state commissions at the three-way meetings, the responses to

the staff's review letters and public notice, the recommendations of the staff, and the proposals of the companies, we find the remaining-life and SLELG rates listed in the appendices to be appropriate.[2]

*V. Ordering Clauses*

31. Pursuant to Sections 4(i) and 220(b) of the Communications Act of 1934, as amended, 47 U.S.C. § § 4(i) and 220(b), IT IS ORDERED, That the percentages of depreciation set for in the Appendices to this order are prescribed effective on the dates listed. Appendix 1 contains remaining-life rates and Appendix 2 contains SLELG rates.

32. IT IS FURTHER ORDERED, That the companies shall submit to the Commission whole-life as well as remaining life depreciation studies during the next represcription period.

33. IT IS FURTHER ORDERED, That the companies shall notify this Commission within 10 days of any deviation from the depreciation percentages and practices prescribed in this order.

FEDERAL COMMUNICATIONS COMMISSION

William J. Tricarico *Secretary*

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[2] We do not decide in this order the effect of our prescribing these rates for intrastate ratemaking purposes. Rather, the preemptive effect of this Commission's accounting and/or depreciation determinations is before us in a separate proceeding initiated by a further *Petition for Reconsideration* filed by AT&T in Docket No. CC 79–105, 85 FCC 2d 818 (1981), *recon.*, 89 FCC 2d 1094 (1982), and a *Petition for Declaratory Ruling* filed by the General Telephone Company of Ohio.

APPENDIX 1

*FEDERAL COMMUNICATIONS COMMISSION*

*Schedule of Annual Percentages of Depreciation for*

*GENERAL TELEPHONE COMPANY OF THE NORTHWEST, INCORPORATED—IDAHO*

*Effective December 1, 1982*

| *Acct. No.* | *Class or Subclass of Plant* | *Average Remaining Life* | *Future Net Salvage* | *Depr. Reserve Ratio* | *Remaining Life Rate* |
|---|---|---|---|---|---|
| | | (Years) | (%) | (%) | (%) |
| 212 | Buildings | 27.4 | 9 | 14 | 2.8 |
| 221 | Central Office Equipment | | | | |
| | Manual Switching | 10.4 | -3 | -11.7 | 11.0 |
| | Automatic & Sw (Electro-Mech) | 7.1 | -1 | 23.6 | 10.9 |
| | Automatic Sw (Analog) | 18.9 | 5 | 0 | 5.0 |
| | Automatic Sw (Digital) | 17.5 | 9 | 9.7 | 4.6 |
| | Automatic Message Recording | 8.2 | 0 | 8.8 | 11.1 |
| | Circuit | 11.4 | 7 | 12.1 | 7.1 |
| | Radio | 11.5 | 0 | 28.7 | 6.2 |
| 231 | Station Apparatus | | | | |
| | Telephone & Miscellaneous | 6.8 | 1 | 11.2 | 12.9 |
| | Teletypewriter | 7.4 | 1 | 21.9 | 10.4 |
| | Radiotelephone | 7.2 | 1 | 22.8 | 10.6 |
| 232 | Station Connections— Other | - | - | - | 5.0# |
| 234 | Large Private Branch Exchanges | 4.2 | 4 | 20.2 | 18.0 |
| 241 | Pole Lines | 13.3 | -45 | -3.7 | 11.2 |
| 242.1 | Aerial Cable | 16.5 | -13 | 17.9 | 5.8 |
| 242.2 | Underground Cable | 30.8 | -12 | 9.4 | 3.3 |
| 242.3 | Buried Cable | 26 | -5 | 12.4 | 3.6 |
| 242.4 | Submarine Cable | 11.5 | 0 | 17.1 | 7.2 |
| 243 | Aerial Wire | 6.9 | -40 | -18.1 | 22.9 |
| 244 | Underground Conduit | 44.3 | 0 | 10.8 | 2.0* |
| 261 | Furniture & Office Equipment | | | | |
| | Furniture | 15.6 | 5 | 14.7 | 5.1 |
| | Machines | 7.6 | 5 | 16.9 | 10.3 |
| | Data Processing Computers | - | - | - | 0. # |
| 264 | Vehicles & Other Work Equipment | | | | |
| | Motor Vehicles | 4.9 | 14 | 35.6 | 10.3 |
| | Shop Equipment | 16.1 | 1 | 8.1 | 5.6 |
| | Tools & Other Work Equipment | 11.4 | 3 | 22.7 | 6.5 |

*This rate was prescribed previously.

#This rate is not based upon life, salvage and reserve factors.

*FEDERAL COMMUNICATIONS COMMISSION*
*Schedule of Annual Percentages of Depreciation for*
*GENERAL TELEPHONE COMPANY OF THE NORTHWEST, INCORPORATED—MONTANA*

*Effective December 1, 1982*

| *Acct. No.* | *Class or Subclass of Plant* | *Average Remaining Life* | *Future Net Salvage* | *Depr. Reserve Ratio* | *Remaining Life Rate* |
|---|---|---|---|---|---|
| | | (Years) | (%) | (%) | (%) |
| 212 | Buildings | 24.9 | 9 | 15.5 | 3.0 |
| 221 | Central Office Equipment | | | | |
| | Automatic Sw (Electro-Mech) | 8.1 | 0 | 22.9 | 9.5 |
| | Automatic Message Recording | 8.1 | 0 | 26.5 | 9.1 |
| | Circuit | 11.8 | 7 | 30.1 | 5.3 |
| | Radio | 6.4 | 0 | 87.2 | 2.0 |
| 231 | Station Apparatus | | | | |
| | Telephone & Miscellaneous | 5.9 | 1 | 20 | 13.4 |
| | Teletypewriter | 7.4 | 1 | 21.5 | 10.5 |
| 232 | Station Connections—Other | - | - | - | 5.0# |
| 234 | Large Private Branch Exchanges | 6.2 | 10 | 15.8 | 12.0 |
| 241 | Pole Lines | 16.4 | -45 | -11.2 | 9.5 |
| 242.1 | Aerial Cable | 13.5 | -13 | 28.3 | 6.3 |
| 242.2 | Underground Cable | 27.1 | -12 | -9.7 | 4.5 |
| 242.3 | Buried Cable | 27.5 | -5 | 8.5 | 3.5 |
| 243 | Aerial Wire | 3.9 | -40 | -148.8 | 74.1 |
| 244 | Underground Conduit | 45.2 | 0 | 7.4 | 2.0* |
| 261 | Furniture & Office Equipment | | | | |
| | Furniture | 15.6 | 5 | 1.5 | 6.0 |
| | Machines | 7.6 | 5 | 22.3 | 9.6 |
| | Data Processing Computers | 5.6 | 10 | 69.3 | 3.7 |
| 264 | Vehicles & Other Work Equipment | | | | |
| | Motor Vehicles | 4.9 | 14 | 19.7 | 13.5 |
| | Shop Equipment | 16.1 | 1 | 3.7 | 5.9 |
| | Tools & Other Work Equipment | 11.4 | 3 | 14.4 | 7.2 |

*This rate was prescribed previously.
#This rate is not based upon life, salvage and reserve factors.

*FEDERAL COMMUNICATIONS COMMISSION*
*Schedule of Annual Percentages of Depreciation for*
*GENERAL TELEPHONE COMPANY OF THE NORTHWEST, INCORPORATED—OREGON*

*Effective January 1, 1983*

| *Acct. No.* | *Class or Subclass of Plant* | *Average Remaining Life* | *Future Net Salvage* | *Depr. Reserve Ratio* | *Remaining Life Rate* |
|---|---|---|---|---|---|
| | | (Years) | (%) | (%) | (%) |
| 212 | Buildings | 31.5 | 13 | 14.3 | 2.3 |
| 221 | Central Office Equipment | | | | |
| | Manual Switching | 11.8 | -3 | -4.3 | 9.1 |
| | Automatic Sw (Electro-Mech) | 5 | -1 | 5.9 | 19.0 |
| | Automatic Sw (Analog) | 13.4 | 5 | 26 | 5.1 |
| | Automatic Sw (Digital) | 20.8 | 5 | 13.3 | 3.9 |
| | Automatic Message Recording | 5.5 | 0 | 21.1 | 14.3 |
| | Circuit | 13.6 | 7 | 24.3 | 5.1 |
| | Radio | 10.9 | 0 | 30 | 6.4 |
| 231 | Station Apparatus | | | | |
| | Telephone & Miscellaneous | 5.9 | 1 | 7.9 | 15.4 |
| | Teletypewriter | 7.4 | 1 | 28 | 9.6 |
| | Radiotelephone | 7.2 | 1 | 31.2 | 9.4 |
| 232 | Station Connections—Other | - | - | - | 5.0# |
| 234 | Large Private Branch Exchanges | 5 | 4 | 21.2 | 15.0 |
| 241 | Pole Lines | 16.5 | -45 | 25.2 | 7.3 |
| 242.1 | Aerial Cable | 17.8 | -15 | 24.2 | 5.1 |
| 242.2 | Underground Cable | 25 | -6 | 15 | 3.6 |
| 242.3 | Buried Cable | 22.8 | -5 | 18.4 | 3.8 |
| 242.4 | Submarine Cable | 11.5 | 0 | 60.1 | 3.5 |
| 243 | Aerial Wire | 9 | -40 | 54.7 | 9.5 |
| 244 | Underground Conduit | 44.1 | 0 | 11.5 | 2.0* |
| 261 | Furniture & Office Equipment | | | | |
| | Furniture | 15.6 | 5 | 29.1 | 4.2 |
| | Machines | 7.6 | 5 | 47.9 | 6.2 |
| | Data Processing Computers | 5.6 | 10 | 25.1 | 11.6 |
| 264 | Vehicles & Other Work Equipment | | | | |
| | Motor Vehicles | 4.9 | 14 | 49.4 | 7.5 |
| | Shop Equipment | 16.1 | 1 | 14.4 | 5.3 |
| | Tools & Other Work Equipment | 11.4 | 3 | 15.1 | 7.2 |

*This rate was prescribed previously.

#This rate is not based upon life, salvage and reserve factors.

*FEDERAL COMMUNICATIONS COMMISSION*
*Schedule of Annual Percentages of Depreciation for*
*GENERAL TELEPHONE COMPANY OF THE NORTHWEST, INCORPORATED—WASHINGTON*

*Effective January 1, 1983*

| *Acct. No.* | *Class or Subclass of Plant* | *Average Remaining Life* | *Future Net Salvage* | *Depr. Reserve Ratio* | *Remaining Life Rate* |
|---|---|---|---|---|---|
| | | (Years) | (%) | (%) | (%) |
| 212 | Buildings | 30.8 | 14 | 12.3 | 2.4* |
| 221 | Central Office Equipment | | | | |
| | Manual Switching | 6.1 | -3 | 42.2 | 10.0 |
| | Automatic Sw (Electro-Mech) | 5.2 | -1 | 32.5 | 13.2 |
| | Automatic Sw (Analog) | 17.4 | 5 | 27 | 3.9 |
| | Automatic Sw (Digital) | 19.9 | 5 | 13 | 4.1 |
| | Automatic Message Recording | 5.5 | 0 | 1.2 | 18.0 |
| | Circuit | 12.2 | 7 | 18.5 | 6.1 |
| | Radio | 12.4 | 0 | 17.3 | 6.7 |
| 231 | Station Apparatus | | | | |
| | Telephone & Miscellaneous | 5.9 | 1 | 16.1 | 14.1 |
| | Teletypewriter | 7.4 | 1 | 16.7 | 11.1 |
| | Radiotelephone | 7.2 | 1 | 20.2 | 10.9 |
| 232 | Station Connections—Other | - | - | - | 5.0# |
| 234 | Large Private Branch Exchanges | 4.8 | 4 | 13.5 | 17.2 |
| 241 | Pole Lines | 17 | -47 | 22.1 | 7.3 |
| 242.1 | Aerial Cable | 17.5 | -5 | 20.9 | 4.8* |
| 242.2 | Underground Cable | 27.1 | -20 | 15 | 3.9 |
| 242.3 | Buried Cable | 23.3 | -5 | 16.6 | 3.8 |
| 242.4 | Submarine Cable | 11.5 | 0 | 32.8 | 5.8 |
| 243 | Aerial Wire | 4.4 | -30 | -309.4 | 99.9 |
| 244 | Underground Conduit | 42.7 | 0 | 14.4 | 2.0* |
| 261 | Furniture & Office Equipment | | | | |
| | Furniture | 15.6 | 5 | 16.8 | 5.0 |
| | Machines | 7.6 | 5 | 34.8 | 7.9 |
| | Data Processing Computers | 5.6 | 10 | 5 | 15.2 |
| 264 | Vehicles & Other Work Equipment | | | | |
| | Motor Vehicles | 4.9 | 14 | 41 | 9.2 |
| | Shop Equipment | 16.1 | 1 | 22.3 | 4.8 |
| | Tools & Other Work Equipment | 11.4 | 3 | 15 | 7.2 |

*This rate was prescribed previously.
#This rate is not based upon life, salvage and reserve factors.

*FEDERAL COMMUNICATIONS COMMISSION*
*Schedule of Annual Percentages of Depreciation for*
*GENERAL TELEPHONE COMPANY OF THE NORTHWEST, INCORPORATED—GENERAL PLANT*

*Effective January 1, 1983*

| *Acct. No.* | *Class or Subclass of Plant* | *Average Remaining Life* | *Future Net Salvage* | *Depr. Reserve Ratio* | *Remaining Life Rate* |
|---|---|---|---|---|---|
| | | (Years) | (%) | (%) | (%) |
| 212 | Buildings | 39.1 | 14 | 10.3 | 1.9 |
| 221 | Central Office Equipment | | | | |
| | Manual Switching | 5.5 | -3 | 66.6 | 6.6 |
| | Automatic Sw (Electro-Mech) | 3.4 | -1 | 72.4 | 8.4 |
| | Automatic Sw (Analog) | 17.4 | 5 | 0 | 5.5 |
| | Automatic Sw (Digital) | 18 | 5 | 0 | 5.3 |
| | Automatic Message Recording | 18.9 | 0 | 9.8 | 4.8 |
| | Circuit | 12.2 | 7 | 13.6 | 6.5 |
| | Radio | 12.4 | 0 | 36 | 5.2 |
| 234 | Large Private Branch Exchanges | 6.5 | 5 | 16.2 | 12.1 |
| 261 | Furniture & Office Equipment | | | | |
| | Furniture | 15.6 | 5 | 17.5 | 5.0 |
| | Machines | 7.6 | 5 | 25.9 | 9.1 |
| | Data Processing Computers | 5.6 | 10 | -6.3 | 17.2 |
| 264 | Vehicles & Other Work Equipment | | | | |
| | Motor Vehicles | 4.9 | 14 | 50 | 7.3 |
| | Shop Equipment | 16.1 | 1 | 31.9 | 4.2 |
| | Tools & Other Work Equipment | 11.4 | 3 | 8.8 | 7.7 |

*FEDERAL COMMUNICATIONS COMMISSION*
*Schedule of Annual Percentages of Depreciation for*
*GENERAL TELEPHONE COMPANY OF THE SOUTHEAST—ALABAMA*

| *Acct. No.* | *Class or Subclass of Plant* | *Average Remaining Life* | *Future Net Salvage* | *Depr. Reserve Ratio* | *Remaining Life Rate* |
|---|---|---|---|---|---|
| | | (Years) | (%) | (%) | (%) |
| 212 | Buildings | 30 | 10 | 17.9 | 2.4* |
| 221 | Central Office Equipment | | | | |
| | Manual Switching | 2.5 | -5 | 89.2 | 6.3 |
| | Automatic Sw (Non-Digital) | 4.9 | 8 | 38.2 | 11.0 |
| | Automatic Sw (Digital) | 22 | 5 | 1 | 4.3 |
| | Auto Msg Rec (Non-Digital) | 2.9 | 0 | 68.8 | 10.8 |
| | Auto Msg Rec (Digital) | 22 | 5 | 1.2 | 4.3 |
| | Circuit | 14.5 | 9 | 36.7 | 3.7 |
| | Radio | 7.4 | -4 | 50.8 | 7.2 |
| 231 | Station Apparatus | | | | |
| | Telephone | 5.1 | 1 | 26.8 | 14.2 |
| | Teletypewriter | 7.7 | 5 | 13.7 | 10.6 |
| | Radiotelephone | 2.5 | 0 | 88.6 | 4.6 |
| 232 | Station Connections—Other | - | - | - | 5.0# |
| 234 | Large Private Branch Exchanges | 5.2 | 2 | 18.3 | 15.3 |
| 241 | Pole Lines | 14.6 | -31 | 34 | 6.6 |
| 242.1 | Aerial Cable | 19.3 | -7 | 34.9 | 3.7 |
| 242.2 | Underground Cable | 24 | -6 | 14.4 | 3.8 |
| 242.3 | Buried Cable | 21 | -3 | 27.9 | 3.6 |
| 243 | Aerial Wire | 4.9 | -37 | -33 | 34.7 |
| 244 | Underground Conduit | 48 | -1 | 17.9 | 1.7* |
| 261 | Furniture & Office Equipment | 13.6 | 1 | 29.1 | 5.1 |
| 264 | Vehicles & Other Work Equipment | | | | |
| | Motor Vehicles | 4.6 | 12 | 56.5 | 6.8 |
| | Vehicle Shop Equipment | 12.6 | 2 | 15.8 | 6.5 |
| | Tools & Equipment | 16.2 | 2 | 29.6 | 4.2 |

All rates are effective January 1, 1983 except Account Numbers 231 and 234 which are effective December 1, 1982.

*This rate was prescribed previously.

#This rate is not based upon life, salvage and reserve factors.

*FEDERAL COMMUNICATIONS COMMISSION*
*Schedule of Annual Percentages of Depreciation for*
*GENERAL TELEPHONE COMPANY OF THE SOUTHEAST—NORTH CAROLINA*

| *Acct. No.* | *Class or Subclass of Plant* | *Average Remaining Life* | *Future Net Salvage* | *Depr. Reserve Ratio* | *Remaining Life Rate* |
|---|---|---|---|---|---|
| | | (Years) | (%) | (%) | (%) |
| 212 | Buildings | 35 | 10 | 13.9 | 2.2* |
| 221 | Central Office Equipment | | | | |
| | Manual Switching | 22 | 0 | -31.2 | 6.0 |
| | Automatic Sw (Non-Digital) | 5 | 20 | 29 | 10.2 |
| | Automatic Sw (Digital) | 22 | 5 | 2.8 | 4.2 |
| | Auto Msg Rec (Non-Digital) | 4.6 | -1 | 18.2 | 18.0 |
| | Auto Msg Rec (Digital) | 22 | 5 | 6.4 | 4.0 |
| | Circuit | 12.6 | 3 | 20 | 6.1 |
| | Radio | 7.4 | -4 | 41.2 | 8.5 |
| 231 | Station Apparatus | | | | |
| | Telephone | 6 | 2 | 21.3 | 12.8 |
| | Teletypewriter | 5.7 | 10 | 46.9 | 7.6 |
| | Radiotelephone | 2 | 0 | 100 | 0. * |
| 232 | Station Connections—Other | - | - | - | 5.0# |
| 234 | Large Private Branch Exchanges | 5 | 4 | -6.4 | 20.5 |
| 241 | Pole Lines | 19.3 | -18 | 31.5 | 4.5 |
| 242.1 | Aerial Cable | 17.9 | 2 | 41.7 | 3.1 |
| 242.2 | Underground Cable | 27 | -4 | 23.4 | 3.0 |
| 242.3 | Buried Cable | 23 | -1 | 16.9 | 3.7 |
| 243 | Aerial Wire | 6.9 | -59 | -60.3 | 31.8 |
| 244 | Underground Conduit | 47 | -1 | 21.3 | 1.7* |
| 261 | Furniture & Office Equipment | 12 | 10 | 13.2 | 6.4 |
| 264 | Vehicles & Other Work Equipment | | | | |
| | Motor Vehicles | 5.8 | 19 | 63 | 3.1 |
| | Aircraft | 7.5 | 60 | 27.3 | 1.7 |
| | Vehicle Shop Equipment | 10.5 | 5 | 33.6 | 5.8 |
| | Tools & Equipment | 16.2 | 2 | 23.9 | 4.6 |

All rates are effective January 1, 1983 except Account Numbers 231 and 234 which are effective December 1, 1982.

*This rate was prescribed previously.
#This rate is not based upon life, salvage and reserve factors.

*FEDERAL COMMUNICATIONS COMMISSION*
*Schedule of Annual Percentages of Depreciation for*
*GENERAL TELEPHONE COMPANY OF THE SOUTHEAST—TENNESSEE*

| *Acct. No.* | *Class or Subclass of Plant* | *Average Remaining Life* | *Future Net Salvage* | *Depr. Reserve Ratio* | *Remaining Life Rate* |
|---|---|---|---|---|---|
| | | (Years) | (%) | (%) | (%) |
| 212 | Buildings | 33 | 10 | 17.3 | 2.2* |
| 221 | Central Office Equipment | | | | |
| | Manual Switching | 21 | 0 | -86.9 | 8.9 |
| | Automatic Sw (Non-Digital) | 6.8 | 2 | -9.3 | 15.8 |
| | Automatic Sw (Digital) | 21 | 5 | 0.3 | 4.5 |
| | Auto Msg Rec (Non-Digital) | 6.4 | 10 | -9.3 | 15.5 |
| | Auto Msg (Digital) | 21 | 5 | 0.4 | 4.5 |
| | Circuit | 14.2 | 8 | 17.9 | 5.2 |
| | Radio | 7.4 | -4 | 53.5 | 6.8 |
| 231 | Station Apparatus | | | | |
| | Telephone | 6.5 | 2 | 16.8 | 12.5 |
| | Teletypewriter | 6.2 | 5 | -0.3 | 15.4 |
| | Radiotelephone | 2 | 0 | 91.7 | 4.2 |
| 232 | Station Connections—Other | - | - | - | 5.0# |
| 234 | Large Private Branch Exchanges | 5 | 3 | 24.5 | 14.5 |
| 241 | Pole Lines | 20 | -9 | 19.2 | 4.5 |
| 242.1 | Aerial Cable | 22 | -7 | 28.3 | 3.6 |
| 242.2 | Underground Cable | 28 | 0 | 13.9 | 3.1 |
| 242.3 | Buried Cable | 21 | 2 | 18.8 | 3.8 |
| 243 | Aerial Wire | 5.6 | -51 | -54.5 | 36.7 |
| 244 | Underground Conduit | 48 | -1 | 19.7 | 1.7* |
| 261 | Furniture & Office Equipment | 13.2 | 2 | 22.4 | 5.7 |
| 264 | Vehicles & Other Work Equipment | | | | |
| | Motor Vehicles | 5.4 | 17 | 49.8 | 6.1 |
| | Vehicle Shop Equipment | 7.2 | 3 | 51.9 | 6.3 |
| | Tools & Equipment | 16.2 | 2 | 30.2 | 4.2 |

All rates are effective January 1, 1983 except Account Numbers 231 and 234 which are effective December 1, 1982.

*This rate was prescribed previously.

#This rate is not based upon life, salvage and reserve factors.

*FEDERAL COMMUNICATIONS COMMISSION*
*Schedule of Annual Percentages of Depreciation for*
*HAWAIIAN TELEPHONE COMPANY*

| *Acct. No.* | *Class or Subclass of Plant* | *Average Remaining Life* | *Future Net Salvage* | *Depr. Reserve Ratio* | *Remaining Life Rate* |
|---|---|---|---|---|---|
| | | (Years) | (%) | (%) | (%) |
| 212 | Buildings | 36.9 | -1 | 24.1 | 2.1 |
| 221 | Central Office Equipment | | | | |
| | Manual | 7.8 | -3 | 14.3 | 11.4 |
| | Automatic Sw (Electro-Mech) | 5.2 | 0 | 31 | 13.3 |
| | Automatic Sw (Digital) | 22.4 | 0 | 17.8 | 3.7 |
| | Automatic Sw (1 & 2 EAX) | 17.5 | 0 | 9.9 | 5.1 |
| | Automatic Message Recording | 7.8 | -1 | 11.1 | 11.5 |
| | Circuit | 10.9 | 11 | 20.9 | 6.2 |
| | Radio | 10.6 | 3 | 33 | 6.0 |
| | TP | 13.2 | -9 | 61.8 | 3.6 |
| 231 | Station Apparatus | | | | |
| | Telephone | 5.8 | 5 | 17.3 | 13.4 |
| | Teletypewriter | 7.2 | 5 | 22.3 | 10.1 |
| | Radio | 4.9 | 5 | 67.4 | 5.6 |
| 232 | Station Connections— Other | - | - | - | 5.0# |
| 234 | Large Private Branch Exchanges | | | | |
| | Telephone | 5.7 | 3 | 24.5 | 12.7 |
| | Switching & Signaling Dev. | 7 | 5 | 61 | 4.9 |
| 241 | Pole Lines | 25.6 | -30 | 31.7 | 3.8 |
| 242.1 | Aerial Cable | 25.4 | -1 | 30.2 | 2.8 |
| 242.2 | Underground Cable | 34.1 | -18 | 16.4 | 3.0 |
| 242.3 | Buried Cable | 25.7 | -7 | 40.4 | 2.6 |
| 242.4 | Submarine Cable | 16.7 | -1 | 62.4 | 2.3 |
| 243 | Aerial Wire | 10.5 | -20 | 47.3 | 6.9 |
| 244 | Underground Conduit | 44.8 | -5 | 19 | 1.9 |
| 261 | Furniture & Office Equipment | 10.9 | 14 | 17.8 | 6.3 |
| 264 | Vehicles & Other Work Equipment | | | | |
| | Motor Vehicles | 5.7 | 18 | 36.5 | 8.0 |
| | Shop Equipment | 9.4 | 0 | 65.1 | 3.7 |
| | Tools & Other Work Equipment | 8.6 | 5 | 45.1 | 5.8 |

All rates are effective January 1, 1983 except Account Numbers 231 and 234 which are effective December 1, 1982.

*This rate was prescribed previously.
#This rate is not based upon life, salvage and reserve factors.

APPENDIX 2

*FEDERAL COMMUNICATIONS COMMISSION*
*Schedule of Annual Percentages of Depreciation*
*Calculated under the Equal Life Group Methodology for*
*GENERAL TELEPHONE COMPANY OF THE NORTHWEST, INCORPORATED—IDAHO*

| *Acct. No.* | *Class or Subclass of Plant (a)* | *Year (b)** | *Proj. Life (c)* | *Fut. Net Salv. (d)* | *Original Cost Rates Age at Beginning of Year 0.0 (e)* | *0.5 (f)* | *1.5 (g)* | *2.5 (h)* | *Net Salv. Rate (i = −d/c)* |
|---|---|---|---|---|---|---|---|---|---|
| | | | (Yrs.) | (%) | (%) | (%) | (%) | (%) | (%) |
| 221 | Central Office Equipment | | | | | | | | |
| | Automatic Sw (Digital) | 1983 | 24 | 9 | 6.2 | 5.6 | 5.3 | 5.1 | -0.4 |
| | Circuit | 1983 | 15 | 7 | 12.7 | 10.1 | 8.8 | 8.1 | -0.5 |
| | Radio | 1983 | 15 | 0 | 9.7 | 8.7 | 8.1 | 7.7 | 0. |
| 241 | Pole Lines | 1983 | 18 | -45 | 11.9 | 10.1 | 8.8 | 8.0 | 2.5 |
| 242.1 | Aerial Cable | 1983 | 21 | -13 | 9.0 | 8.0 | 7.3 | 6.8 | 0.6 |
| 242.2 | Underground Cable | 1983 | 35 | -12 | 4.4 | 4.0 | 3.7 | 3.6 | 0.3 |
| 242.3 | Buried Cable | 1983 | 30 | -5 | 4.8 | 4.7 | 4.6 | 4.4 | 0.2 |
| 242.4 | Submarine Cable | 1983 | 20 | 0 | 5.9 | 5.8 | 5.7 | 5.6 | 0. |
| 244 | Underground Conduit | 1983 | 50 | 0 | 2.0 | 2.0 | 2.0 | 2.0 | 0. |

*ELG rates are effective January 1 of the year shown in column b and are to be applied to plant additions for that year and subsequent years.

*FEDERAL COMMUNICATIONS COMMISSION*
*Schedule of Annual Percentages of Depreciation*
*Calculated under the Equal Life Group Methodology for*
*GENERAL TELEPHONE COMPANY OF THE NORTHWEST, INCORPORATED—MONTANA*

| *Acct. No.* | *Class or Subclass of Plant (a)* | *Year (b)** | *Proj. Life (c)* | *Fut. Net Salv. (d)* | *Original Cost Rates Age at Beginning of Year 0.0 (e)* | *0.5 (f)* | *1.5 (g)* | *2.5 (h)* | *Net Salv. Rate (i = −d/c)* |
|---|---|---|---|---|---|---|---|---|---|
| | | | (Yrs.) | (%) | (%) | (%) | (%) | (%) | (%) |
| 221 | Central Office Equipment | | | | | | | | |
| | Circuit | 1983 | 15 | 7 | 12.7 | 10.1 | 8.8 | 8.1 | -0.5 |
| | Radio | 1983 | 15 | 0 | 9.7 | 8.7 | 8.1 | 7.7 | 0. |
| 241 | Pole Lines | 1983 | 23 | -45 | 9.5 | 8.2 | 7.3 | 6.6 | 2.0 |
| 242.1 | Aerial Cable | 1983 | 21 | -13 | 9.0 | 8.0 | 7.3 | 6.8 | 0.6 |
| 242.2 | Underground Cable | 1983 | 35 | -12 | 4.4 | 4.0 | 3.7 | 3.6 | 0.3 |
| 242.3 | Buried Cable | 1983 | 30 | -5 | 4.8 | 4.7 | 4.6 | 4.4 | 0.2 |
| 244 | Underground Conduit | 1983 | 50 | 0 | 2.0 | 2.0 | 2.0 | 2.0 | 0. |

*ELG rates are effective January 1 of the year shown in column b and are to be applied to plant additions for that year and subsequent years.

*FEDERAL COMMUNICATIONS COMMISSION*
*Schedule of Annual Percentages of Depreciation*
*Calculated under the Equal Life Group Methodology for*
*GENERAL TELEPHONE COMPANY OF THE NORTHWEST, INCORPORATED—OREGON*

| Acct. No. | Class or Subclass of Plant (a) | Year (b)* | Proj. Life (c) | Fut. Net Salv. (d) | Original Cost Rates Age at Beginning of Year 0.0 (e) | 0.5 (f) | 1.5 (g) | 2.5 (h) | Net Salv. Rate (i = −d/c) |
|---|---|---|---|---|---|---|---|---|---|
| | | | (Yrs.) | (%) | (%) | (%) | (%) | (%) | (%) |
| 221 | Central Office Equipment | | | | | | | | |
| | Automatic Sw (Analog) | 1982 | 14 | 5 | 10.3 | 9.2 | 8.6 | 8.2 | -0.4 |
| | Automatic Sw (Digital) | 1982 | 24 | 5 | 6.2 | 5.6 | 5.3 | 5.1 | -0.2 |
| | Circuit | 1982 | 17 | 7 | 11.4 | 9.1 | 8.0 | 7.3 | -0.4 |
| | Radio | 1982 | 15 | 0 | 9.7 | 8.7 | 8.1 | 7.7 | 0. |
| 241 | Pole Lines | 1982 | 22 | -45 | 9.9 | 8.5 | 7.5 | 6.9 | 2.0 |
| 242.1 | Aerial Cable | 1982 | 23 | -15 | 8.2 | 7.4 | 6.8 | 6.3 | 0.7 |
| 242.2 | Underground Cable | 1982 | 30 | -6 | 5.1 | 4.6 | 4.3 | 4.2 | 0.2 |
| 242.3 | Buried Cable | 1982 | 28 | -5 | 5.2 | 5.0 | 4.9 | 4.7 | 0.2 |
| 242.4 | Submarine Cable | 1982 | 20 | 0 | 5.9 | 5.8 | 5.7 | 5.6 | 0. |
| 244 | Underground Conduit | 1982 | 50 | 0 | 2.0 | 2.0 | 2.0 | 2.0 | 0. |

*ELG rates are effective January 1 of the year shown in column b and are to be applied to plant additions for that year and subsequent years.

*FEDERAL COMMUNICATIONS COMMISSION*
*Schedule of Annual Percentages of Depreciation*
*Calculated under the Equal Life Group Methodology for*
*GENERAL TELEPHONE COMPANY OF THE NORTHWEST, INCORPORATED—WASHINGTON*

| Acct. No. | Class or Subclass of Plant (a) | Year (b)* | Proj. Life (c) | Fut. Net Salv. (d) | Original Cost Rates Age at Beginning of Year 0.0 (e) | 0.5 (f) | 1.5 (g) | 2.5 (h) | Net Salv. Rate (i = −d/c) |
|---|---|---|---|---|---|---|---|---|---|
| | | | (Yrs.) | (%) | (%) | (%) | (%) | (%) | (%) |
| 221 | Central Office Equipment | | | | | | | | |
| | Automatic Sw (Analog) | 1983 | 17 | 5 | 8.6 | 7.7 | 7.2 | 6.9 | -0.3 |
| | Automatic Sw (Digital) | 1983 | 24 | 5 | 6.2 | 5.6 | 5.3 | 5.1 | -0.2 |
| | Circuit | 1983 | 15 | 7 | 12.7 | 10.1 | 8.8 | 8.1 | -0.5 |
| | Radio | 1983 | 15 | 0 | 9.7 | 8.7 | 8.1 | 7.7 | 0. |
| 241 | Pole Lines | 1983 | 22 | -47 | 9.9 | 8.5 | 7.5 | 6.9 | 2.1 |
| 242.1 | Aerial Cable | 1983 | 22 | -5 | 8.6 | 7.7 | 7.0 | 6.6 | 0.2 |
| 242.2 | Underground Cable | 1983 | 32 | -20 | 4.8 | 4.3 | 4.1 | 3.9 | 0.6 |
| 242.3 | Buried Cable | 1983 | 28 | -5 | 5.2 | 5.0 | 4.9 | 4.7 | 0.2 |
| 242.4 | Submarine Cable | 1983 | 20 | 0 | 5.9 | 5.8 | 5.7 | 5.6 | 0. |
| 244 | Underground Conduit | 1983 | 50 | 0 | 2.0 | 2.0 | 2.0 | 2.0 | 0. |

*ELG rates are effective January 1 of the year shown in column b and are to be applied to plant additions for that year and subsequent years.

*FEDERAL COMMUNICATIONS COMMISSION*
*Schedule of Annual Percentages of Depreciation*
*Calculated under the Equal Life Group Methodology for*
*GENERAL TELEPHONE COMPANY OF THE NORTHWEST, INCORPORATED—GENERAL PLANT*

| Acct. No. | Class or Subclass of Plant (a) | Year (b)* | Proj. Life (c) | Fut. Net Salv. (d) | Original Cost Rates Age at Beginning of Year 0.0 (e) | 0.5 (f) | 1.5 (g) | 2.5 (h) | Net Salv. Rate (i = −d/c) |
|---|---|---|---|---|---|---|---|---|---|
| | | | (Yrs.) | (%) | (%) | (%) | (%) | (%) | (%) |
| 221 | Central Office Equipment | | | | | | | | |
| | Automatic Sw (Digital) | 1983 | 24 | 5 | 6.2 | 5.6 | 5.3 | 5.1 | -0.2 |
| | Circuit | 1983 | 15 | 7 | 12.7 | 10.1 | 8.8 | 8.1 | -0.5 |
| | Radio | 1983 | 15 | 0 | 9.7 | 8.7 | 8.1 | 7.7 | 0. |

*ELG rates are effective January 1 of the year shown in column b and are to be applied to plant additions for that year and subsequent years.

*FEDERAL COMMUNICATIONS COMMISSION*
*Schedule of Annual Percentages of Depreciation*
*Calculated under the Equal Life Group Methodology for*
*GENERAL TELEPHONE COMPANY OF THE SOUTHEAST—ALABAMA*

| Acct. No. | Class or Subclass of Plant (a) | Year (b)* | Proj. Life (c) | Fut. Net Salv. (d) | Original Cost Rates Age at Beginning of Year 0.0 (e) | 0.5 (f) | 1.5 (g) | 2.5 (h) | Net Salv. Rate (i = −d/c) |
|---|---|---|---|---|---|---|---|---|---|
| | | | (Yrs.) | (%) | (%) | (%) | (%) | (%) | (%) |
| 221 | Central Office Equipment | | | | | | | | |
| | Automatic Sw (Digital) | 1983 | 25 | 5 | 6.0 | 5.4 | 5.1 | 4.9 | -0.2 |
| | Auto Msg Rec (Digital) | 1983 | 25 | 5 | 6.0 | 5.4 | 5.1 | 4.9 | -0.2 |
| | Circuit | 1983 | 18 | 9 | 11.9 | 10.1 | 8.8 | 8.0 | -0.5 |
| | Radio | 1983 | 14 | -4 | 8.1 | 8.1 | 8.1 | 8.1 | 0.3 |
| 241 | Pole Lines | 1983 | 20 | -31 | 10.5 | 8.7 | 7.7 | 7.1 | 1.6 |
| 242.1 | Aerial Cable | 1983 | 26 | -7 | 6.1 | 5.5 | 5.2 | 5.0 | 0.3 |
| 242.2 | Underground Cable | 1983 | 30 | -6 | 5.1 | 4.6 | 4.3 | 4.2 | 0.2 |
| 242.3 | Buried Cable | 1983 | 28 | -3 | 5.4 | 4.9 | 4.6 | 4.4 | 0.1 |
| 244 | Underground Conduit | 1983 | 60 | -1 | 2.6 | 2.4 | 2.3 | 2.2 | 0. |

*ELG rates are effective January 1 of the year shown in column b and are to be applied to plant additions for that year and subsequent years.

*FEDERAL COMMUNICATIONS COMMISSION*
*Schedule of Annual Percentages of Depreciation*
*Calculated under the Equal Life Group Methodology for*
*GENERAL TELEPHONE COMPANY OF THE SOUTHEAST—NORTH CAROLINA*

| Acct. No. | Class or Subclass of Plant (a) | Year (b)* | Proj. Life (c) | Fut. Net Salv. (d) | Original Cost Rates Age at Beginning of Year 0.0 (e) | 0.5 (f) | 1.5 (g) | 2.5 (h) | Net Salv. Rate (i = −d/c) |
|---|---|---|---|---|---|---|---|---|---|
| | | | (Yrs.) | (%) | (%) | (%) | (%) | (%) | (%) |
| 221 | Central Office Equipment | | | | | | | | |
| | Automatic Sw (Digital) | 1983 | 25 | 5 | 6.0 | 5.4 | 5.1 | 4.9 | -0.2 |
| | Auto Msg Rec (Digital) | 1983 | 25 | 5 | 6.0 | 5.4 | 5.1 | 4.9 | -0.2 |
| | Circuit | 1983 | 15 | 3 | 14.1 | 11.8 | 10.2 | 9.1 | -0.2 |
| | Radio | 1983 | 14 | -4 | 8.1 | 8.1 | 8.1 | 8.1 | 0.3 |
| 241 | Pole Lines | 1983 | 24 | -18 | 10.5 | 8.3 | 7.2 | 6.6 | 0.8 |
| 242.1 | Aerial Cable | 1983 | 27 | 2 | 5.2 | 5.0 | 4.8 | 4.7 | -0.1 |
| 242.2 | Underground Cable | 1983 | 35 | -4 | 4.4 | 4.0 | 3.7 | 3.6 | 0.1 |
| 242.3 | Buried Cable | 1983 | 28 | -1 | 6.8 | 5.7 | 5.1 | 4.8 | 0. |
| 244 | Underground Conduit | 1983 | 60 | -1 | 2.6 | 2.4 | 2.3 | 2.2 | 0. |

*ELG rates are effective January 1 of the year shown in column b and are to be applied to plant additions for that year and subsequent years.

*FEDERAL COMMUNICATIONS COMMISSION*
*Schedule of Annual Percentages of Depreciation*
*Calculated under the Equal Life Group Methodology for*
*GENERAL TELEPHONE COMPANY OF THE SOUTHEAST—TENNESSEE*

| Acct. No. | Class or Subclass of Plant (a) | Year (b)* | Proj. Life (c) | Fut. Net Salv. (d) | Original Cost Rates Age at Beginning of Year 0.0 (e) | 0.5 (f) | 1.5 (g) | 2.5 (h) | Net Salv. Rate (i = −d/c) |
|---|---|---|---|---|---|---|---|---|---|
| | | | (Yrs.) | (%) | (%) | (%) | (%) | (%) | (%) |
| 221 | Central Office Equipment | | | | | | | | |
| | Automatic Sw (Digital) | 1983 | 25 | 5 | 6.0 | 5.4 | 5.1 | 4.9 | -0.2 |
| | Auto Msg Rec (Digital) | 1983 | 25 | 5 | 6.0 | 5.4 | 5.1 | 4.9 | -0.2 |
| | Circuit | 1983 | 17 | 8 | 12.6 | 10.6 | 9.2 | 8.3 | -0.5 |
| | Radio | 1983 | 14 | -4 | 8.1 | 8.1 | 8.1 | 8.1 | 0.3 |
| 241 | Pole Lines | 1983 | 25 | -9 | 11.4 | 8.4 | 6.9 | 6.2 | 0.4 |
| 242.1 | Aerial Cable | 1983 | 30 | -7 | 6.3 | 5.5 | 5.0 | 4.7 | 0.2 |
| 242.2 | Underground Cable | 1983 | 35 | 0 | 4.4 | 4.0 | 3.7 | 3.6 | 0. |
| 242.3 | Buried Cable | 1983 | 28 | 2 | 5.4 | 4.9 | 4.6 | 4.4 | -0.1 |
| 244 | Underground Conduit | 1983 | 60 | -1 | 2.6 | 2.4 | 2.3 | 2.2 | 0. |

*ELG rates are effective January 1 of the year shown in column b and are to be applied to plant additions for that year and subsequent years.

*FEDERAL COMMUNICATIONS COMMISSION*
*Schedule of Annual Percentages of Depreciation*
*Calculated under the Equal Life Group Methodology for*
*HAWAIIAN TELEPHONE COMPANY*

| *Acct. No.* | *Class or Subclass of Plant (a)* | *Year (b)** | *Proj. Life (c)* | *Fut. Net Salv. (d)* | *Original Cost Rates Age at Beginning of Year 0.0 (e)* | *0.5 (f)* | *1.5 (g)* | *2.5 (h)* | *Net Salv. Rate (i = −d/c)* |
|---|---|---|---|---|---|---|---|---|---|
| | | | (Yrs.) | (%) | (%) | (%) | (%) | (%) | (%) |
| 221 | Central Office Equipment | | | | | | | | |
| | Automatic Sw (Digital) | 1983 | 25 | 0 | 4.7 | 4.6 | 4.5 | 4.5 | 0. |
| | Automatic Sw (1 & 2 EAX) | 1983 | 19 | 0 | 6.2 | 6.0 | 5.9 | 5.8 | 0. |
| | Circuit | 1983 | 14.5 | 11 | 10.9 | 10.1 | 9.5 | 9.0 | -0.8 |
| | Radio | 1983 | 16 | 3 | 8.0 | 7.9 | 7.8 | 7.6 | -0.2 |
| | TP | 1983 | 19.5 | -9 | 7.3 | 7.1 | 6.8 | 6.6 | 0.5 |
| 241 | Pole Lines | 1983 | 32 | -30 | 6.6 | 5.4 | 4.8 | 4.4 | 0.9 |
| 242.1 | Aerial Cable | 1983 | 32 | -1 | 6.6 | 5.4 | 4.8 | 4.4 | 0. |
| 242.2 | Underground Cable | 1983 | 40 | -18 | 5.4 | 4.4 | 3.9 | 3.7 | 0.5 |
| 242.3 | Buried Cable | 1983 | 35 | -7 | 4.4 | 4.0 | 3.7 | 3.6 | 0.2 |
| 242.4 | Submarine Cable | 1983 | 23 | -1 | 5.1 | 5.0 | 4.9 | 4.9 | 0. |
| 243 | Aerial Wire | 1983 | 16 | -20 | 16.7 | 11.8 | 9.6 | 8.4 | 1.3 |
| 244 | Underground Conduit | 1983 | 55 | -5 | 2.9 | 2.6 | 2.5 | 2.4 | 0.1 |

*ELG rates are effective January 1 of the year shown in column b and are to be applied to plant additions for that year and subsequent years.

FCC 82–544

**BEFORE THE**

# FEDERAL COMMUNICATIONS COMMISSION

**WASHINGTON, D.C. 20554**

In the Matter of

The Prescription of Revised Percentages of Depreciation pursuant to Section 220(b) of the Communications Act of 1934, as amended for:

Continental Telephone Company of California
Continental Telephone Company of Upstate New York, Inc.

ORDER

Adopted December 8, 1982; Released: December 13, 1982

By the Commission:

## *I. Introduction*

1. Section 220(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 220(b), states that the Commission shall, as soon as practicable, prescribe classes of property for which depreciation charges may be included in operating expenses and the percentages of depreciation which shall be charged to each of the classes. It also states that the Commission may, when it deems necessary, modify the classes and percentages so prescribed.

2. By this order we prescribe revised percentages of depreciation (depreciation rates) for the two Continental Telephone Corporation companies listed above using the straight line vintage group remaining-life (remaining-life) method. This order is the first depreciation prescription order for Continental Telephone Company of California (Continental-California). Depreciation rates were previously prescribed for Continental Telephone Company of Upstate New York (Continental-Upstate New York).

## *II. Background*

### A. *Remaining-Life Method*

3. Prior to 1981, we had only used the stright line vintage group whole-life (whole-life) depreciation method in prescribing depreciation rates for telephone companies' plant. Using this method, we had attempted to determine the appropriate depreciation accruals applicable to each year's operations using current estimates of life and net salvage. As estimates of life and net salvage changed over time, the whole-life rates were changed in accordance with these changes in estimates. However, using whole-life concepts, no attempt was made to adjust the rates to allow for reserve surpluses or deficits resulting from the cumulative over- or under-estimation of life and net salvage factors. This changed with our final decision in FCC Docket No. 20188, 83 FCC 2d 267 (1980), *reconsideration*, 87 FCC 2d 916 (1981), where we revised Part 31 of the Rules and Regulations, the "Uniform System of Accounts for Class A and B Telephone Companies," to allow the use of the remaining-life depreciation method. The remaining-life method is designed to distribute the unrecovered cost (original cost less the sum of the depreciation reserve and future net salvage) of a group of assets over its estimated average life expectancy; thus, this procedure includes an adjustment which allocates any reserve deficit or surplus over the estimated average remaining life.

4. We directed the staff to phase in the implementation of remaining-life depreciation rates in conjunction with the normal triennial represcription cycle (see paragraph 5). For Continental, implementation began with the Continental Telephone Company of Virginia which was regularly scheduled for review in 1981. This company submitted a study requesting revised depreciation rates using the remaining-life method. After a complete review, we adopted remaining-life depreciation rates for Continental-Virginia in January. *See* FCC 82–41, 88 FCC 2d 1344 (1982). Remaining-life rates for the two carriers normally scheduled for review in 1982 (i.e., Continental-California and Continental-Upstate New York) were reviewed in detail this year. Our findings and conclusions regarding these rates are discussed beginning in paragraph 12.

### B. *Companies Scheduled for Review During 1982*

5. Since the late 1940's, the Commission has reviewed and prescribed the depreciation rates of approximately one-third of the larger FCC-subject telephone companies each year. In most cases we have prescribed rates for a carrier only after the following actions have been completed:

(1) Submittal of depreciation studies by the carrier.

(2) Staff review of the carrier's filings and studies in support of its proposed life and salvage factors.

(3) Independent staff analysis of such information as the carrier's plant mortality data and equipment retirement plans.
(4) Preparation of preliminary staff recommendations.
(5) Discussion of the carrier's filings and the preliminary Commission staff proposals at a conference in which representatives of the carrier and the staffs of the respective state commissions and the FCC participate (i.e., a three-way meeting).

6. In conjunction with the normal triennial represcription cycle, Continental-California and Continental-Upstate New York submitted studies proposing new depreciation rates based upon revised life and salvage estimates, using the remaining-life method for all plant accounts. These studies were reviewed in detail by the staff, which then prepared its own preliminary life, net salvage, and rate proposals and forwarded them to the companies and the respective state commissions. Three-way meetings were held at which the life, net salvage, and rate proposals of all three parties were thoroughly discussed. For all accounts of both companies, agreements regarding life and net salvage estimates were reached between our staff, the companies, and the respective state commission staffs.

7. As a result of the review discussed above, on October 4, 1982, the staff issued a public notice (Report No. 2967)[1] entitled, "Depreciation Rate Prescriptions Proposed for Domestic Telephone Companies." This public notice summarized the FCC staff's new or revised depreciation rates for Continental-Upstate New York and the change in depreciation expense that would result if these proposed depreciation rates were approved. The staff transmitted to the company and the New York Public Service Commission a copy of this public notice together with a schedule of the proposed remaining-life rates. On October 12, 1982, the staff issued an additional public notice (Report No. 2969), entitled as the first, summarizing the staff's new or revised depreciation rates for Continental-California and the change in depreciation expense that would result if these proposed rates were approved. The staff transmitted to the company and the California Public Utilities Commission a copy of this public notice together with a schedule of the proposed remaining-life rates. The following section summarizes the issues raised by the respondents to these public notices.

## *III. Summary of Comments*

8. Continental-Upstate New York responded to the October 4 public notice, and the California Commission responded to the October 12 public notice.

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[1] The public notice was erroneously dated October 1, 1982; however, October 4, 1982 is the correct issue date.

9. Continental-Upstate New York noted that this prescription is not a routine review of prior whole-life rates, but rather the initial move into full remaining-life rates. It stated that remaining-life rates will produce a substantial increase in depreciation expense. In Continental's view, the approval of rates retroactively would not ". . . represent recovery of capital but, rather, an erosion of earnings." Continental urged that the FCC approve the requested effective date.

10. Continental-Upstate New York also stated that it is now seeking represcription of depreciation rates for Continental Telephone Company of Upstate New York, instead of Continental Telephone Company of New York as originally requested. When it filed its depreciation studies, it expected to complete a merger with five smaller Continental companies prior to the FCC prescription of new depreciation rates. Since Continental now expects the merger to take place in 1983, it requested that the FCC prescribe depreciation rates under the company's present name. Continental also stated that the five smaller Continental companies will adopt the prescribed depreciation rates, as if the merger had taken place prior to FCC prescription.

11. The California Commission urged that the January 1, 1983, effective date for Continental-California be approved as requested by the company. California has adopted the policy of making depreciation changes effective concurrent with the effective date of the resulting revenue rate changes. They stated that this policy eliminates the negative effects of a retroactive change. California alleged that the company would show a large unrecovered expense in the year that the depreciation rates were made effective if there was no corresponding revenue recovery. The possible negative effects on bond rating and equity value generated by a lack of coordination at the state and federal regulatory levels would not, in California's view, be in the best interest of Continental-California or its ratepayers.

## *IV. Discussion of Issues*

### A. *Rates for Continental-Update New York*

12. The staff analyzed a depreciation study for Continental Telephone Company of New York, a new entity to be formed from the proposed merger of Continental-Upstate New York with five smaller Continental companies. This merger, which had been expected to be consummated in 1982, is now scheduled for early 1983. Accordingly, Continental has requested that we prescribe depreciation rates for the company under its current name, Continental Telephone Company of Upstate New York.

13. The depreciation study which Continental-Upstate New York submitted to the staff was based upon plant owned by Continental-Upstate New york and the five smaller companies. The company stated tht the

rates prescribed would be applied to both Continental-Upstate New York and the five smaller companies, as if the merger had already taken place. Continental-Upstate New York is the largest portion of the prospective merged company. The staff believes that depreciation rates determined solely for Continental-Upstate New York's facilities would approximate those determined from the study of the merged company. Therefore, we approve the prescription of depreciation rates for Continental-Upstate New York, and expect that the rates prescribed by this order will be applied to the accounts of the new company, Continental Telephone Company of New York, upon completion of the merger in 1983.

B. *Effective Dates*

14. With few exceptions, prior to 1981 depreciation rates were prescribed retroactively to the beginning of the year in which they were filed. This appeared to be a reasonable practice inasmuch as the rates were based on depreciation studies as of that date (i.e., January 1). In 1981, with the initial implementation of the remaining-life and SLELG depreciation methods, many companies requested effective dates other than January 1, 1981. The companies maintained that, because of the controversy surrounding the Commission's approval of the new method, it would be difficult to get approval of revenue rate increases from state commissions until the FCC had actually ordered new depreciation rates. The companies were also concerned that the states would not allow any retroactive revenue rates to match retroactive prescription of depreciation rates. After considering the regulatory and financial reporting aspects of this issue, we determined that, during this transitional period from the whole-life to the remaining-life method, we would allow the booking of the new rates on the various effective dates proposed by the companies. *See* FCC 82–41, *supra*.

15. This year Continental-California filed for a January 1, 1983, effective date. Continental-Upstate New York filed for a December 1, 1982, effective date. The companies argued that Section 43.43(e) of our rules allow—at the discretion of the company—the booking of new depreciation rates retroactively to a date no earlier than the first of the year in which they were filed. Section 43.43(e) of our rules states:

> "Unless otherwise directed . . . proposed changes in depreciation rates shall be filed at least ninety (90) days prior to the last day of the month with respect to which the revised rates are first to be applied . . . and such rates *may be made retroactive* to a date not prior to the beginning of the year in which the filing is made." [Emphasis added.]

16. We maintain our belief that as a matter of sound accounting, depreciation rates should be applied on dates corresponding as closely as possible to the date of the underlying depreciation study. In Docket No.

20188, we determined that proper capital recovery is predicated in large measure, upon the timely application of the correct depreciation rates. We also noted that, if inaccurate depreciation rates are applied, the resulting misstatement of operating expenses could harm present and potential investors and, ultimately, ratepayers by denying them and the regulators an accurate, objective financial picture of the companies' operations and capital requirements.

17. Nevertheless, we agree with the California Commission that, during this period of continuing transition to the new method, retroactive booking of depreciation rates would create uncertainties which, contrary to our intent, may deny some companies a reasonable opportunity to achieve capital recovery. The use of the new method has resulted in both significant depreciation expense changes and in the requirement for additional company studies to support prescriptions. There has also been resistance on the part of some states to accept remaining-life rates at all, and there may be a concomitant reluctance by certain state commissions to grant intrastate revenue rate increases until we actually prescribe depreciation rates using the new method. We shall, therefore, accept the effective dates as filed by the companies.

C. *Accounts for which Reamining-Life Rates are not Recommended*

18. In FCC Docket No. 79–105, 85 FCC 2d 818 (1981), we amended the accounting rules for station connections and ordered that all FCC-subject carriers identify and assign the investment in Account 232, Station Connections, to at least two subclasses of plant—Station Connections-Inside Wire and Station Connections-Other. Our order required carriers to expense future costs associated with the Station Connections-Inside Wire subclass on a phase-in or flash-cut basis and to continue to capitalize future costs associated with the Station Connections-Order subclass. Because the retirement ratios and mortality dispersion patterns of the Station Connections-Other subclass are not similar to those for the account as a whole, the depreciation rates prescribed in the past for the entire Station Connections account could not be applied to the Station Connections-Other subclass. Instead, new rates had to be developed. The staff and the companies held discussions and determined that a 5% rate would be used for Continental-California and a 2.5% rate would be used for Continental-Upstate New York until there was sufficient data to ascertain specific mortality characteristics which could then be used to prescribe more precise depreciation rates. In January, in FCC Order No. 82–41, *supra*, we prescribed a 2.5% rate for Continental-Upstate New York.[2]

[2] Continental-California is having depreciation rates prescribed for the first time in this order.

19. In a separate proceeding initiated by an AT&T petition for rulemaking (see our notice of proposed rulemaking in FCC Docket No. 82–679, 47 F.R. 44767), significant changes in the accounting for Station Connections-Other are under consideration. This proceeding will likely be concluded early in 1983. In the interim, we do not believe it prudent to change the existing depreciation rates for this account.

20. In a few accounts with minimal plant balances, the use of the remaining-life method would result in negative depreciation rates because the reserve balances were in excess of service values (i.e., original cost less net salvage). The staff reviewed several similar instances and found that the primary cause was the transfer of plant from one account to another without a corresponding transfer of reserve amounts. The prescription of a negative depreciation rate is not consistent with generally accepted accounting principles. Therefore, we will adopt the use of a 0% depreciation rate for all accounts where the calculation of remaining-life depreciation rates would result in a negative rate. We recognize that this action does not totally resolve the problem (i.e., reserves greater than service values). However, the problem is technical in nature and can probably best be resolved at the staff level. We direct the staff to work with the carriers to determine what reserve transfers, if any, are required.

D. *Conclusion*

21. Having considered the positions set forth by the companies and respective state commissions at the three-way meetings, the responses to the staff's review letters and public notices, the recommendations of the staff, and the proposals of the companies, we find the remaining-life rates listed in the Appendix to be appropriate.[3]

## *V. Ordering Clauses*

22. Pursuant to Sections 4(i) and 220(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 4(i) and 220(b), IT IS ORDERED, That the percentages of depreciation set forth in the Appendix to this order are prescribed effective on the dates listed.

23. IT IS FURTHER ORDERED, That the companies shall submit to the Commission whole-life as well as remaining-life depreciation studies during the next represcription period.

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[3] We do not decide in this order the effect of our prescribing these rates for intrastate ratemaking purposes. Rather, the preemptive effect of this Commission's accounting and/or depreciation determinations is before us in a separate proceeding initiated by a further *Petition for Reconsideration* filed by AT&T in Docket No. CC 79–105, 85 FCC 2d 818 (1981), *recon.*, 89 FCC 2d 1094 (1982), and a *Petition for Declaratory Ruling* filed by the General Telephone Company of Ohio.

24. IT IS FURTHER ORDERED, That the companies shall notify this Commission within 10 days of any deviation from the depreciation percentages and practices prescribed in this order.

FEDERAL COMMUNICATIONS COMMISSION

William J. Tricarico *Secretary*

APPENDIX 1

*FEDERAL COMMUNICATIONS COMMISSION*

*Schedule of Annual Percentages of Depreciation for*

*CONTINENTAL TELEPHONE COMPANY OF CALIFORNIA*

| *Acct. No.* | *Class or Subclass of Plant* | *Average Remaining Life* | *Future Net Salvage* | *Depr. Reserve Ratio* | *Remaining Life Rate* |
|---|---|---|---|---|---|
| | | (Years) | (%) | (%) | (%) |
| 212 | Buildings | 20 | -8 | 32.4 | 3.8 |
| 221 | Central Office Equipment | | | | |
| | Other | 5.6 | 3.6 | 30.2 | 11.8 |
| | Digital | 16.7 | 0 | -0.3 | 6.0* |
| | Switchboard | 2.2 | -1 | 42.9 | 26.4 |
| | Microwave | 12 | -1 | 17.8 | 6.9 |
| | Circuit | 11.5 | 5.4 | 15.9 | 6.8 |
| 231 | Station Apparatus | 6 | 8 | 12.5 | 13.3 |
| 232 | Station Connections— | | | | |
| | Other | - | - | - | 5.0# |
| 234 | Large Private Branch Exchange | 5 | 10.3 | 22.6 | 13.4 |
| 241 | Pole Lines | 20 | -16 | 32.3 | 4.2 |
| 242.1 | Aerial Cable | 14.2 | -9 | 34 | 5.3 |
| 242.2 | Underground Cable | 30 | -1 | 12.5 | 3.0 |
| 242.3 | Buried Cable | 30 | 5 | 20.6 | 2.5 |
| 242.4 | Submarine Cable | 13.2 | 0 | 46.7 | 4.0* |
| 243 | Aerial Wire | 7.1 | -25 | -6.6 | 18.5 |
| 244 | Underground Conduit | 42.7 | -5 | 18 | 2.0 |
| 261 | Furniture & Office Equipment | 18.5 | 15 | 50.2 | 1.9 |
| 264 | Vehicles & Other Work Equipment | | | | |
| | Vehicles & Work Equipment | - | - | - | 0. # |
| | Aircraft | 5 | 48 | 4.6 | 9.5 |

All rates are effective January 1, 1983 except Account Numbers 231 and 234 which are effective December 1, 1982.

*This rate was prescribed previously.

#This rate is not based upon life, salvage and reserve factors.

*FEDERAL COMMUNICATIONS COMMISSION*
*Schedule of Annual Percentages of Depreciation for*
*CONTINENTAL TELEPHONE COMPANY OF UPSTATE NEW YORK, INCORPORATED*

*Effective January 1, 1982*

| *Acct. No.* | *Class or Subclass of Plant* | *Average Remaining Life* | *Future Net Salvage* | *Depr. Reserve Ratio* | *Remaining Life Rate* |
|---|---|---|---|---|---|
| | | (Years) | (%) | (%) | (%) |
| 212 | Buildings | | | | |
| | Other | 25 | 2 | 24.6 | 2.9 |
| | Leasehold Improvements | 15.9 | 0 | 19.9 | 5.0 |
| 221 | Central Office Equipment | | | | |
| | Step-by-Step | 4 | 10 | 54.4 | 8.9 |
| | Mobile Radio | 2.9 | 0 | 92.2 | 2.7 |
| | Switchboard | 1.8 | 0 | 50.9 | 27.3 |
| | Crossbar/Electronic | 6.5 | 0 | 40.3 | 9.2 |
| | Microwave | 5.5 | 0 | 23.6 | 13.9 |
| | Power | 4.6 | 9 | 20.7 | 15.3 |
| | Circuit | 9.7 | 9 | 23.5 | 7.0 |
| | Ticketing | 2.8 | 3 | 17.2 | 28.5 |
| | Digital | 17.6 | 0 | 4.3 | 5.4 |
| 231 | Station Apparatus | 4.5 | 8 | 37.5 | 12.1 |
| 232 | Station Connections— | | | | |
| | Other | - | - | - | 2.5# |
| 234 | Large Private Branch Exchanges | 2 | 9 | 41.7 | 24.7 |
| 241 | Pole Lines | 22 | -36 | 32.1 | 4.7 |
| 242.1 | Aerial Cable | 22 | -15 | 33.6 | 3.7 |
| 242.2 | Underground Cable | 28 | -20 | 26.7 | 3.3 |
| 242.3 | Buried Cable | 25 | -2 | 19.5 | 3.3 |
| 242.4 | Submarine Cable | 22 | -2 | 35.9 | 3.0 |
| 243 | Aerial Wire | 6.2 | -49 | 8.6 | 22.6 |
| 244 | Underground Conduit | 38 | -3 | 28.7 | 2.0 |
| 261 | Furniture & Office | | | | |
| | Equipment | 13.6 | 10 | 55.2 | 2.6 |
| | Data Handling | 8 | 0 | 0 | 12.5 |
| 264 | Vehicles & Other Work Equipment | | | | |
| | Motor Vehicles | - | - | - | 0. # |
| | Other Work Equipment | 8.3 | 8 | 55.5 | 4.4 |
| | Major Cable Burying Equip. | 4.5 | 15 | 44.9 | 8.9 |

*This rate is not based upon life, salvage and reserve factors.

Diversification, of Control of Mass Media Ownership and Management, Integration of

In comparative b/c proceeding, where one applicant's 90% interest in single other station located 100 miles from the proposed community of license is weighed against the other applicant's 51% interest in two stations that are 200 miles away and 23% interest in a construction permittee that is 400 miles away, the Review Board holds that no diversification preference is appropriate for either applicant.

-*Ottumwa B/cing Company*
BC Docket No. 80–306

FCC 82R–78

**Before the**

## Federal Communications Commission

**Washington, D.C. 20554**

| | |
|---|---|
| In re Applications of | |
| Audrey G. Osmundson, Mark K. Osmundson and Jean O. Rother d/b/a OTTUMWA BROADCASTING COMPANY Ottumwa, Iowa | BC DOCKET NO. 80–306 File No. BPH–790327AB |
| IOWA COMMUNICATIONS COMPANY Ottomwa, Iowa | BC DOCKET NO. 80–307 File No. BPH–790328AQ |
| For a Construction Permit for a New FM Station | |

*Appearances*

*Larry D. Perry* and *Timothy K. Brady*, on behalf of Audrey G. Osmundson, Mark K. Osmundson and Jean O. Rother d/b/a Ottumwa Broadcasting Company; *James K. Edmundson* and *Gerald P. McCartin*, on behalf of Iowa Communications Company; and *Charles W. Kelley* and *Arthur I. Steinberg*, on behalf of the Chief, Mass Media Bureau, Federal Communications Commission.

## DECISION

Adopted:December 22, 1982;Released: December 27, 1982.

BOARD MEMBER JACOBS FOR THE REVIEW BOARD:

1. This proceeding involves the mutually exclusive applications of Ottumwa Broadcasting Company (OBC) and Iowa Communications Company (ICC) for authority to construct a new FM broadcast station (Channel 224A) at Ottumwa, Iowa. By Hearing Designation Order, Mimeo No. 32870, 45 Fed Reg. 43870, published June 30, 1980, these applications were designated for hearing on the standard comparative issue, with a financial qualifications issue against OBC. By Memorandum Opinion and Order, FCC 81M–1429, released May 7, 1981, presiding Administrative Law Judge (ALJ) Joseph P. Gonzalez denied ICC's request that a real part;y in interest issue be added against OBC but granted ICC leave to adduce evidence concerning Dean L. Osmundson's participation in the affairs of OBC under the standard comparative issue.

2. In an Initial Decision (I.D.), released June 22, 1982 (FCC 82D–45), the ALJ granted ICC's application. In reaching this result, he found OBC to be financially qualified and awarded it a slight preference under the comparative criterion of diversification of control of the media of mass communications, but concluded that ICC deserved a "strong" preference under the criterion of integration of ownership and management, which far outweighed the diversification preference. I.D., para. 86. The proceeding is now before the Review Board on exceptions filed by OCB. ICC has filed a statement in support of the Initial Decision and contingent limited exceptions. Reply briefs have been filed by OBC and ICC. In addition, OBC filed a motion to enlarge issues, which ICC and the Mass Media Bureau oppose. The Board has reviewed the Initial Decision in light of these exceptions, briefs, and other pleadings and our examination of the record.[1] We adopt the findings of fact in the Initial Decision, except as modified herein, and affirm the ALJ's ultimate conclusion that grant of ICC's application will better serve the public interest, convenience and necessity.[2]

3. *Diversification of Control of the Media of Mass Communications.* Neither OBC nor ICC has any other media interests; however, their principals do. In OBC, 80% partner Audrey G. Osmundson and her son,

[1] Oral argument was not requested by the parties.

[2] In light of this disposition and because ICC's exceptions were contingent only, they will not be addressed herein.

10% partner Mark K. Osmundson, own 45% of MTN Broadcasting Company, licensee of daytime-only AM Station KDAO, Marshalltown, Iowa, and Mrs. Osmundson's husband, Deal L. Osmundson, owns the remaining 55%. Tr. 377. Consistent with *Alexander S. Klein, Jr.*, 69 FCC 2d 2134, 2141, 44 RR 2d 127, 137 (Rev. Bd. 1978), *aff'd*, 86 FCC 2d 423, 49 RR 2d 606 (1981), the ALJ concluded that Dean Osmundson's interest should be treated in combination with his wife's for diversification evaluation purposes, even though he separately concluded that Mr. Osmundson was merely a consultant to OBC and not an undisclosed part;y in interest or principal. I.D., paras. 71, 72, 77. Thus, OBC principals owning 90% of OBC are deemed to control 100% of KDAO. *Id.*, para. 77, Marshalltown is approximately 100 miles from Ottumwa. *Id.*, para. 81. As to ICC, 51% owner Howard G. Bill owns 100% of Olmstead County Broadcasting Company, licensee of Stations KOLM and KWWK(FM), Rochester, Minnesota, and 45% of the permittee of a new FM station at Fergus Falls, Minnesota. Id., para. 60. Rochester is approximately 200 miles from Ottumwa, and Fergus Falls, 400 miles. *Id.*, para. 78.

4. In awarding a slight diversification preference to OBC, the ALJ focussed on the number of media interests held by each applicant and the percentages of ownership. I.D., para. 82. Although he found that the applicants appeared to be "almost equal," he concluded that OBC's 90% effective interest in a single station located 100 miles from Ottumwa (90% partners own 100% of station) was less troublesome in terms of diversification than ICC's 51% interest in two stations located 200 miles away (51% owner owns 100% of licensee of both stations) and 23% interst in a construction permittee located 400 miles away (51% owner owns 45% of permittee).[3] In its exceptions, OBC proposes the "Perry [mathematical] formula" for diversification evaluation, and maintains that under it OBC is entitled to a substantial diversification preference. On the other hand, ICC urges in its reply brief that neither applicant is entitled to any diversification preference.

5. The Board has previously eschewed the use of simple mathematical formulas in the comparative evaluation process. *See Van Buren Community Service*, 87 FCC 2d 1018, 1022 n. 1, 50 RR 2d 115, 119 n. 1 (Rev. Bd. 1981) (faulty mathematical method for calculating quantitative integration credit disapproved). The "Perry formula" similarly fails, because it weighs an insufficient number of factors—percentage ownership interest

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[3] In rephrasing the ALJ's conclusion, we have corrected mathematical errors contained in his original formulation. See I.D., para. 82.

in applicant and percentage ownership interest in each other medium[4] — and neglects to take into account additional relevant factors, such as distance from the proposed community of license, circulation or size of audience, and presence of other media in the area. *See Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393, 395, 5 RR 2d 1901, 1909 (1965). The record in this proceeding is devoid of any data on any of the latter factors, excedpt distance, and we conclude that the ALJ erred in not giving significant weight to that factor. For, while the *Policy Statement*, *supra*, does not establish an order of priority for diversification factors, its discussion of distance emphasizes that the significance to be accorded other media interests is directly related to the "degree that existing media are in, or close to, the community being applied for." *Id.* Where, as here, all other media interests are at least 100 miles from Ottumwa, that fact may make other factors "more relevant," *I.D.*, para. 82, but it does not eliminate the relevancy of distance. Thus, in *Cleveland Television Corporation*, *91* FCC 2d *1148*, 52 RR 2d 581, 588 (Rev. Bd. 1982), we recently diminished a diversification preference in part because the preferred applicant's single other media interest was "only about 100 miles" from the proposed community of license, while the other applicant's several interests were all at least 400 miles away. When we weigh OBC's 90% interest in a single station that is "only" 100 miles from Ottumwa against ICC's 51% interest in two stations that are 200 miles away and 23% interest in a permittee that is 400 miles away, we conclude that the disproportinate distances and greater size of OBC's ownership interests cancel out the fact that ICC's interests are more numerous and that the Commission's objective of a maximum diffusion of control of the media of mass communications will not be served in a meaningful way by a preference to either applicant. *See Greater Wichita Telecasting, Inc.*, 90 FCC 2d 1046, 51 RR 2d 1604 (Rev. Bd.), *recon. denied*, FCC 82R–75, released December 14, 1982; *Berryville Broadcasting Co.*, 70 FCC 2d 1, 44 RR 2d 1325 (Rev. Bd. 1978).[5]

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[4] Under this formula, OBC would receive 82 points and ICC, 124.95 points, calculated as follows (OBC Reply Br., p. 12):

*OBC*

A. Osmundson—80% of OBC × 90% of KDAO = 72

M. Osmundson—10% of OBC × 10% of KDAO = 10

82 points

*ICC*

H. Bill—51% of ICC × 100% of KOLM = 51

H. Bill—51% of ICC × 100% of KWWK(FM) = 51

H. Bill—51% of ICC × 45% of permittee = 22.95

124.95 points

[5] OBC's reliance on *WVOC, Inc.*, 45 FCC 2d 420, 29 RR 2d 893 (Rev. Bd. 1974), to support a substantial diversification preference is misplaced. There, the preferred applicant was licensee of a single daytime AM station, located in the proposed community of license, and its opponent was 100% owner of three full-time stations—a full-time AM station in the community of license and two other

6. *Integration of Ownership and Management.* The ALJ concluded that OBC was entitled to no integration credit. Only Audrey and Mark Osmundson were proposed as participating in management of the station, Audrey Osmundson's duties appeared to be purely clerical, and neither one would devote more than 10 hours per week to the station on a permanent basis. I.D., para. 83. On the other hand, ICC's 49% owner, John Bill, was proposed as full-time station manager, and his quantitative integration credit was slightly enhanced by his proposed future residence in Ottumwa. *Id.*, para. 84. Hence, ICC was awarded a "strong" integration preference. *Id.*, para. 86.

7. In its exceptions OBC concedes that ICC is entitled to at least a "slight" integration preference (OBC Br., p. 25). While such a preference would be sufficient to award a grant to ICC, given the absence of a diversification preference here, *e.g.*, *Bradley, Hand, and Triplett*, 89 FCC 2d 657, 51 RR 2d 383 (Rev. Bd. 1982), we shall briefly review the various arguments that OBC makes to support some integration credit for itself. First, OBC maintains that the ALJ erred in not awarding partial quantitative integration credit for the Osmundsons' 10 Hours per week[6] of proposed participation and full quantitative credit for the proposed full-time participation of general manager Douglas Rother, the non-owner husband of Jean O. Rother, a 10% owner. The mathematical formula proposed by OBC to calculate its requested proportional integration credit has previously been rejected, *Van Buren Community Service*, *supra*, and OBC's glib charge that the well-established 20 hour per week minimum requirement for part-time integration credit, enunciated and fully articulated in *Midwest Broadcasting Co.*, 70 FCC 2d 1489, 1495, 45 RR 2d 1, 7 (Rev. Bd.), *review denied*, FCC 79–397, released June 22, 1979, is "arbitrary" is without force or merit. As to the proposed attribution of Jean Rother's 10% ownership interest to her husband for integration purposes, based on a "presumption of common interests" and citing *East Arkansas Broadcasters, Inc.*, 20 RR 934 (1960), and *Alexander S. Klein, Jr.*, *supra*, that presumption has heretofore only been applied in multiple ownership and diversification of control analyses. The essence of integration credit lies in the physical commingling of ownership and participation in broadcast management. Where, as here, one spouse alone (Jean Ro-

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full-time stations 130 miles away. In awarding a moderate preference, the Review Board emphasized the fact that the preferred applicant would be providing a new nighttime "voice" in the community of license and also noted the opponent's (100%) ownership of two other in-state, 130-mile-away stations. All of these facts are significant in the diversification analysis, and none is present in the instant case, other than that ICC is identified with two more stations than OBC and that OBC is identified with a daytime station, albeit 100 miles from the proposed community of license. These slight similarities are insufficient to bring the instant case within the ambit of *WVOC, Inc.'s* holding.

[6] OBC's brief discusses the Osmundsons' "25% time proposal," which was equated by the ALJ with 10 hours per week, based on pages 3 and 4 of OBC's proposed findings and Tr. 385. OBC will not be heard to argue otherwise now (OBC Br., p. 12).

ther) has an ownership interest and the other spouse alone (Douglas Rother) will have day-to-day management responsibilities at the proposed station, there is no basis for presuming the requisite physical admixture of legal ownership (or voting rights) with hands-on participation. Without this concrete bond, which requires more than a mere presumption, the *raison d'etre* for integration credit, identified by the *Policy Statement* itself as the inherent desirability of closely associating legal responsibility and day-to-day performance, 1 FCC 2d at 395, 5 RR 2d at 1909, disappears. Thus, the ALJ properly declined to award OBC any quantitative integration credit.

8. Next, OBC urges that it is entitled at least to "substantial qualitative credit" for the enhancement attributes of its principals: the proposed future residence of Audrey Osmundson in Ottumwa; her civic activities while residing in Ottumwa between 1953 and 1958; and the fact that females have a 90% interest in OBC (Audrey Osmundson, 80%; Jean Rother, 10%) and that Audrey Osmundson would be participating in OBC's operations for 10 hours per week. We affirm the ALJ's refusal to accord any qualitative enhancement credit to OBC, although such credit is theoretically possible where, as here, the level of participation by owners is too small to qualify for quantitative integration credit. *Midwest Broadcasting Co., supra*, 70 FCC 2d at 1497, 45 RR 2d at 8–9. Thus, while proposed future local residence may receive enhancement credit, the ALJ struck this proposal from OBC's direct testimony (Exhibit 4A) as a post-cutoff comparative upgrading attempt (Tr. 39–40). OBC does not dispute that the proposal was untimely; it merely urges that Mrs. Osmundson's change in plans was due to "extenuating circumstances:" and should be treated as new evidence of potentially decisional significance, citing *Rock Radio, Inc.*, 70 FCC 2d 495, 499, 41 RR 2d 779, 783 (Rev. Bd. 1977). *Rocket Radio* does not sanction the receipt of new evidence for comparative purposes. For a comparative choice to be made, bounds must be placed on upgrading efforts, and the ALJ properly excluded OBC's belated proposal. As to Audrey Osmundson's 25 year old past civic participation in Ottumwa, it is clearly too outdated to warrant any credit. *Cf Veterans Broadcasting Co., Inc.*, 38 FCC 25, 61, 4 RR 2d 375, 417 (1965) ("7 years of withdrawal from the civic scene" criticized). Finally, female enhancement credit is only available for integrated female owners. *E.g., Midwest Broadcasting Co., supra*, 70 FCC 2d at 1496, 45 RR 2d at 8. It is undisputed that Jean Rother will not be integrated, and we affirm the ALJ's conclusion that Audrey Osmundson's duties as proposed office manager will be purely clerical, without management or policy functions. Hence, not even residual female enhancement credit is appropriate here. *Cf. Bradley, Hand, and Triplett, supra*, 89 FCC 2d at 661, 51 RR 2d at

387. In sum, we conclude that OBC is not entitled to any qualitative or quantitative integration credit.[7]

9. *Motion to Enlarge Issues.* On September 10, 1982, OBC filed a motion to enlarge the issues and remand the proceeding to determine the effect of a $118,000 civil lawsuit filed against ICC and its president, Howard G. Bill, on ICC's basic financial qualifications. OBC surmises that the pending lawsuit will adversely affect ICC's credit rating and endanger its bank loan commitment and that the unanticipated costs of this and other legal proceedings will significantly impair ICC's ability to construct and operate a new station. The motion will be denied. ICC persuasively points out that the pending lawsuit has not yhet been adjudicated, and that even if it loses it has sufficient additional funds available to finance its proposed station. Under these circumstances, OBC's concerns about ICC's finances are speculative and premature, and no substantial question about ICC's qualifications has been raised. *See Centerville Broadcasting Co.*, 38 FCC 2d 27,25 RR 2d 909 (Rev. Bd. 1972).

10. *Final Comparative Evaluation.* All exceptions having decisional significance have been considered by the Board. We have concluded that neither applicant is entitled to a diversification preference and affirm the ALJ's conclusion that ICC merits a moderate integration preference (our understanding of the ALJ's awarding of a "strong" preference in light of *Communications Properties, Inc., 82* FCC 2d *45*, 52 RR 2d 981, 984 (Rev. Bd. 1982) and ICC's 49% less-than-majority ownership integration). ICC is the clear comparative winner. Therefore, we affirm the ALJ's ultimate conclusion that a grant of ICC's application would better serve the public interest, convenience and necessity.

11. ACCORDINGLY, IT IS ORDERED, That the motions for leave to amend filed by Iowa Communications Company on July 14 and August 24, 1982 ARE GRANTED;

12. IT IS FURTHER ORDERED, That the motion to enlarge issues filed by Ottumwa Broadcasting Company on September 10, 1982 IS DENIED;

13. IT IS FURTHER ORDERED, That the application of Iowa Communications Company (File No. BPH–790328AQ) for a construction permit to establish a new FM broadcast station at Ottumwa, Iowa, IS GRANTED, and the application of Ottumwa Broadcasting Company (File No. BPH–790327AB) IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Jerold L. Jacobs
Member, Review Board

[7] OBC also excepts to the ALJ's refusal to permit inquiry into the past boardcast record of broadcast stations owned by ICC 51% owner, Howard G. Bill. The ALJ was correct. It is well-established that a threshold showing must be made before a past broadcast record can be examined. *Gilbert Group, Inc.*, 49 RR 2d 1081 (1981), and OBC made no such showing.

FCC 82D–45

**BEFORE THE**

# FEDERAL COMMUNICATIONS COMMISSION

**WASHINGTON, D.C. 20554**

| | |
|---|---|
| In re Applications of | |
| Audrey G. Osmundson, Mark K. Osmundson and Jean O. Rother d/b/a OTTUMWA BROADCASTING COMPANY Ottumwa, Iowa | BC DOCKET NO. 80–306 File No. BPH–790327AB |
| IOWA COMMUNICATIONS COMPANY Ottumwa, Iowa | BC DOCKET NO. 80–307 File No. BPH–790328AQ |
| For a Construction Permit for a New FM Station | |

*Appearances*

*Larry Perry* on behalf of Audrey G. Osmundson, Mark K. Osmundson and Jean O. Rother d/b/a Ottumwa Broadcasting Company; *Raymond Bender, Jr.* and *Helen E. Disenhaus*[1] on hehalf of Iowa Communications Company; and *William D. Silva* on behalf of Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE JOSEPH P. GONZALEZ[2]

Issued: June 17, 1982; Released: June 22, 1982

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[1] By letter dated March 3, 1982 and received by the FCC Mail Room on March 8, 1982 from Howard G. Bill, President of ICC, the Presiding Judge was advised that the firm of Dow, Lohnes & Albertson no longer represents ICC and that all communications are to be addressed to Mr. Bill.

[2] This proceeding was initially assigned to Administrative Law Judge Edward Luton by Order, FCC 80M–1138, released July 7, 1980. By Order, FCC 80M–2022, released October 21, 1980, Judge Luton withdrew from further participation in this proceeding, and by Order of the Chief Administrative Law Judge, FCC 80M–2056, released October 23, 1980, the undersigned was designated to preside over and dispose of this matter.

## PRELIMINARY STATEMENT

1. This proceeding involves the mutually exclusive applications of Audrey G. osmundson, Mark K. Osmundson and Jean O. Rother d/b/a Ottumwa Broadcasting Company (OBC) and Iowa Communications Company (ICC)[3] for authority to construct and operate a new FM station in Ottumwa, Iowa on Channel 224A. By Hearing Designation Order (BC 32870) released June 26, 1980, the captioned applications were designated for hearing on the following issues:[4]

1. To determine whether Audrey G. osmundson, Mark K. Osmundson and Jean O. Rother d/b/a Ottumwa Broadcasting Company is financially qualified to construct and operate the proposed station.
2. To determine which of the proposals would, on a comparative basis best serve the public interest.
3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

2. The Hearing Designation Order noted that the data submitted by the applicants indicates that there would be a significant difference in the size of the populations which would receive service from the proposals. Accordingly, the Bureau advised the parties that for purposes of comparison, the populations that would receive FM service of 1 mV/m or greater strength, together with the availability of other primary aural services in such areas, would be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

3. OBC filed a motion to delete the coverage criteria from the standard comparative issue on September 5, 1980. The Presiding Judge found that an amendment to OBC's application filed on July 29, 1980 had corrected an inadvertent error in OBC's engineering report, removing the discrepancy in population figures to be served which had occasioned the designation of a coverage criteria under the standard comparative issue. Accordingly, and for good cause shown, the Presiding Judge deleted the coverage criteria issue by Memorandum Opinion and Order, FCC 80M–2555, released December 9, 1980.

4. Pursuant to a third motion to enlarge issues against OBC filed by ICC on April 7, 1981, the Presiding Judge in a Memorandum Opinion and Order released May 7, 1981 (FCC 81M–1429), granted leave to ICC to adduce evidence concerning Dean L. Osmundson's participation in the affairs of OBC under the standard comparative issue.

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[3] The application of KBIZ, Inc. was dismissed with prejudice by order of the Presiding Judge in a Memorandum Opinion and Order, FCC 80M–2779, released January 7, 1981.

[4] The issue specifically designated aginst KBIZ, Inc., the dismissed applicant, has been omitted for purposes of brevity.

5. Prehearing conferences were held on August 26, 1980 and December 5, 1980. Hearing sessions were held on May 18, 19 and 20, 1981 at the Commission's Washington, D.C. offices. The record was closed on May 20, 1981. Proposed findings of fact and conclusions of law were filed by both party applicants. The Broadcast Bureau filed findings and conclusions limited to the general financial issue designated against OBC.

*Preliminary Matters*

6. ICC filed a fourth motion to enlarge issues against OBC on April 28, 1981. OBC and the Broadcast Bureau[5] filed statements in opposition, and ICC filed a reply.

7. ICC sought the addition of the following issues against OBC:

1. To determine whether there has been an unauthorized de jure or de facto transfer of control of KDAO(AM), Marshalltown, Iowa from Dean L. Osmundson, Audrey G. Osmundson and Mark K. Osmundson d/b/a MTN Broadcasting Company to MTN Broadcasting, Inc., whose shareholders include Jean O. Rother, as well as Dean L. Osmundson, Mark K. Osmundson, and Audrey G. Osmundson; and, if so, the impact thereof on the basic and/or comparative qualifications of OBC; and
2. To determine whether OBC failed to comply with the requirements of Section 1.65 of the Commission's Rules by failing to report a change in the ownership interests of OBC principals; and, if so, the impact thereof on the basic and/or comparative qualifications of OBC.

8. The Presiding Judge denied the motion on the record (Tr. 16). The decision to deny ICC's fourth petition to enlarge was based on his conclusion that the petitioner had failed to make a threshold showing that a transfer of control of station KDAO had occurred, which would warrant the addition of the requested issues.

9. On September 10, 1981, ICC filed a motion to strike certain material from OBC's Reply to ICC's Proposed Findings of Fact and Conclusions of Law and OBC filed a statement in opposition thereto on September 24, 1981.[6]

10. ICC moves to strike on the basis that the objected to material should have been included in OBC's proposed findings and not in its reply. OBC opposes the motion, arguing, essentially, that all of the objected to material constitutes permissible reply.

11. Although ICC's motion to strike has some merit, the Presiding Judge had decided to deny the motion in the interests of avoiding a

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[5] The Broadcast Bureau withdrew its opposition statement on the record (Tr. 221), after the Presiding Judge denied ICC's fourth motion to enlarge issues (Tr. 16).

[6] For good cause shown, OBC's request that its late filed opposition statement be considered, will be granted, and it is so ordered.

detailed discussion of the nature of the objected to material, as well as the necessity of setting forth the reasons why a specific portion of the reply statement should or should not be stricken. The Presiding Judge is confident that he will be able to identify both the relevant parts of OBC's reply statement and that portion of the reply that constitutes new argument.

*Findings of Fact*

*OBC's Financial Qualifications*

12. As noted above, the Broadcast Bureau in its Hearing Designation Order, released June 26, 1980, designated a general financial issue against OBC. The Bureau found that OBC had not provided a balance sheet for the partnership as required by FCC Form 301, Section III, paragraph 2(a); and that it also failed to provide any contracts by which the partners will lend funds to the partnership or any balance sheets for the three partners whereby a determination can be made as to their ability to make their specific contribution.

13. By an amendment filed November 24, 1980 and received by Memorandum Opinion and Order, FCC 80M–2752, released December 30, 1980, OBC's financial proposal was amended to reflect a new loan commitment in the amount of $75,000 from Union Bank and Trust, as well as revised balance sheets for each of OBC's principals. By a subsequent amendment filed April 14, 1981, received by Order, FCC 81M–1428, released May 7, 1981, new financial statements for OBC's principals and their spouses were received.

14. On the basis of the earlier amendment, OBC sought summary decision of the general financial issue, which was opposed by ICC and the Broadcast Bureau. The Presiding Judge, in a Memorandum Opinion and Order released December 30, 1980 (FCC 80M–2752), denied the motion, finding that material questions of fact remained with respect to OBC's financial qualifications which warranted an examination of all aspects of its financial proposal, so that a proper determination could be made as to whether or not OBC was financially qualified to construct the station and operate it for three months.

15. OBC contends that the following funds are available from the sources identified below to meet the costs of constructing the proposed facility and operating it for three months.

| | | |
|---|---|---|
| Audrey Osmundson | $14,000 | |
| Jean Rother | 3,500 | |
| Mark Osmundson | 12,500 | |
| Union Bank and Trust | 75,000 | |
| | −5,130 | (3 months' interest at 17% and one month's principal) |
| Total | $99,870 | |

16. It is ICC's position that OBC has shown the availability of only $17,500 in funds from Audrey and Dean Osmundson and Jean Rother to

meet its estimated costs and expenses. It discounts Mark Osmundson's commitment to contribute $12,500 as insufficient, aruging that his wife, Emily, has not indicated her willingness to commit jointly owned assets to the venture. Similarly, it contends that the availability of a $75,000 bank loan has not been demonstrated, since it too is dependent on Emily Osmundson's willingness to cosign the note which has not been established. It submits therefore that OBC has shown the availability of a maximum of $17,500 to meet construction, pre-operational and first quarter operational costs.

17. Mark Osmundson's balance sheet demonstrates that he has $26,439 in cash (OBC Exhibit 8), some of which is in the form of CD's which are readily convertible into cash (Tr. 343). His current liability consists of $6,168, payable in one year, on his mortgage (OBC Exhibit 8; Tr. 343), leaving him a balance of $20,271. Mark Osdmundson testified that his wife, a non-principal, is willing to commit jointly held assets to the partnership (Tr. 344). Similarly, Mark Osmundson testified that she is willing to provide her signature as personal guarantor for a loan in the amount of $75,000 from the Union Bank and Trust Company (Tr. 344).

18. The assets available to Mark Osmundson are liquid assets. The record, specifically the testimony of Mark Osmundson, indicates that his wife Emily has agreed to commit their joint assets to this venture, and to cosign the loan. There is no evidence of record which contradicts his testimony. No questions have been raised by any party to this proceeding with respect to the financial commitments of Audrey Osmundson in the amount of $14,000 and Jean Rother in the amount of $3,500 (ICC Proposed Findings, p. 5), and the Presiding Judge finds that $17,500 is available to OBC from Audrey Osmundson and Jean Rother. The Presiding Judge concludes therefore that OBC has a total of $99,870 available to meet its proposed costs of constructing the station adn operating it for three months.[7]

19. OBC's estimated financial requirements are as follows (OBC Exhibit 8):

| | |
|---|---|
| Antenna System | $14,000 |
| RF Generating Equipment | 11,000 |
| Monitoring and Test Equipment | 4,000 |
| Program Origination Equipment | 10,000 |
| Acquiring Land | 3,000 |
| Acquiring, Remodeling or Construction Buildings | 5,000 |

[7] Although mention was made of the financial commitment of principals Mark and Audrey Osmundson to a proposed station at Grundy Center, no discussion need be made of this commitment in view of the fact that OBC has withdrawn from that proceeding (Amendment filed September 2, 1981 and received by Order released September 24, 1981 (FCC 81M–3022)).

| | | |
|---|---|---|
| Legal Costs | 5,000 | |
| Engineering Costs | 1,000 | |
| Installation Costs | 4,000 | |
| Other Miscellaneous Costs | 2,000 | |
| Total Construction Costs | | $59,000 |

First Three Months Expenses:

| | | |
|---|---|---|
| Royalty and License Fees | $375 | |
| Music Recordings and Transcriptions | 25 | |
| Telephone and Telegraph | 250 | |
| Repairs, Parts and Maintenance | 125 | |
| Subscriptions and Dues | 25 | |
| Stationery and Office Supplies | 125 | |
| Postage | 75 | |
| Insurance | 100 | |
| Utilities | 450 | |
| News Wire Service | 600 | |
| Emergency Generator | 250 | |
| Salary-General and Sales Manager | 2,600 | |
| Salary-One Announcer-Production | 1,690 | |
| Salary-One Announcer-News | 1,690 | |
| Salary-One Office Person | 1,696 | |
| Salary-Two Part-Time Announcers | 364 | |
| Salary-One Contract Engineer | 390 | |
| FICA, Payroll Taxes and Workmen's Compensation | 680 | |
| Other | 100 | |
| Total First Three Months Expenses | | $11,110 |
| TOTAL COSTS | | $70,110 |

20. ICC contends that OBC has underestimated its costs and expenses. In support of this contention, ICC presented the testimony of Ralph J. Bitzer, a registered professional engineer, who has specialized in broadcasting work since 1946, and Horace W. Gross, president of Frazier, Gross and Kadlec, Inc., a radio and television management consulting firm.

21. Ralph J. Bitzer, in an affidavit dated October 2, 1980, notes OBC's intention to employ used equipment. Although he states that used equipment is available with a savings of between 50 and 60 percent over new equipment, he contends that replacement parts for used equipment are sometimes difficult to obtain, and maintenance costs for used equipment are higher in view of the increased likelihood that such equipment will break down. In addition, because of circuit design and the deterioration of used equipment, Mr. Bitzer is of the opinion that a licensee, employing such equipment, will have to choose between operating at 100 percent modulation, which will result in the audio signal being audibly distorted, or less than 100 percent modulation with a resulting reduction in the effective coverage of the signal (ICC Rebuttal Exhibit 1).

22. Bitzer also questions whether OBC would be able to employ a used antenna, and whether telephone lines can be used to link studio and transmitter for a stereophonic FM station as proposed by OBC. However, in any case, he feels that the expense of leasing telephone lines is sufficiently great so that most stations, intending to operate for any length of time, find it less expensive to use the significantly more reliable microwave studio transmitter link.

23. Horace Gross, a broadcast consultant, anlayzed OBC's capital investment projections and pre-operating and operating expenses at the request of ICC (ICC Rebuttal Exhibit 2, p. 1 of Affidavit). Mr. Gross initially questions the availability of a full complement of technical equipment on the used equipment market (ICC Rebuttal Exhibit 2; Tr. 534). As to the specifics of OBC's proposal, Mr. Gross notes that it fails to provide for costs related to its capital items such as a state sales tax (3%), freight and delivery charges, installation supervision costs, as well as other major capital items such as desks, chairs, file cabinets, typewriters, and adding machines (ICC Rebuttal Exhibit 2, p. 1 of Statement). We indicated, however, on cross-examination, that office furniture and equipment could be leased and would therefore not be a capital item (Tr. 536).

24. Mr. Gross also noted the proposal's failure to account for the costs of a transmitter site access road, an AC power distribution line, and a security fence around the transmitter site (ICC Rebuttal Exhibit 2). He acknowledged however that he was unaware of whether or not the proposed site already had an access road and AC power service (Tr. 538, 539). In addition, Mr. Gross stated that although OBC intends to rely heavily on program automation equipment, its proposal does not account for the costs of such equipment which he estimates can cost a minimum of $7,500 for reliable new or used equipment (ICC Rebuttal Exhibit 2; Tr. 543). He also noted the proposal's failure to contain a provision in its capital cost projections for procuring emergency power generation equipment (ICC Rebuttal Exhibit 2). He indicated however under cross-examination that the cost of emergency generation equipment could be set out as an expense (Tr. 546).

25. With respect to OBC's non-capital expenses, Mr. Gross states that OBC has failed to include such pre-operating expenses as the salaries for its general manager, engineer and secretary, as well as expenses related to the design, construction and/or remodeling of the station's facilities, and of hiring and housing the staff and putting them on the payroll prior to air time, and other incidental costs which he estimates can exceed $5,000 (ICC Rebuttal Exhibit 2). Mr. Gross indicated however, on cross-examination, that he did not know that OBC's proposed general manager had agreed to waive his salary for the first year (Tr. 547), and he agreed that pre-operating expenses could be included under OBC's item, "Other Miscellanceous Expenses" (Tr. 549).

26. Mr. Gross also cited as deficiencies in OBC's list of operating expenses the following: OBC's royalty and music fees which he believes would more realistically amount to $727, instead of the estimated $375; the $600 budgeted for a commercial news service which he feels will amount to $1,482 for the first quarter of operation; the $8.33 set aside for music recordings, stating that it should be $100 a month; OBC's estimated repair costs, arguing that it should be $375 per quarter; and OBC's projected payroll expenses which he feels will amount to $21,825 quarterly (ICC Rebuttal Exhibit 2). Although he agreed that there are arrangements whereby a network will provide a newswire service to a station free of charge in exchange for commercials, he believes that such an arrangement is not available to small stations (Tr. 551–52). He also indicated that he was unaware, when calcualting his estimate of payroll costs, that OBC's general manager would serve without salary, and that OBC's principals will be expected to provide employment assistance.

27. E. W. Bie, a broadcast consultant and communciations consulting engineer, testified on bahalf of OBC.[8] Mr. Bie has specialized in broadcast consulting work for in excess of 20 years, and has personally designed and constructed broadcast facilities of many varieties in many parts of the country, including Class A 3,000 watt FM broadcast stations such as is currently proposed by OBC. He has also submitted numerous technical studies and engineering reports to the FCC which have resulted in grants from the Commission, and presently operates a broadcast equipment refurbishing service and manages a local broadcast station (OBC Exhibit 8C).

28. Mr. Bie indicated that his contacts with OBC with regard to the costs that appear in OBC's proposal were principally with Audrey Osmundson, but that he also met with Mark and Dean Osmundson (Tr. 146). He testified that in his opinion, the equipment called for in OBC's proposal can be purchased for $59,000 using a combination of used, new or refurbished equipment (Tr. 148–49), and that the equipment specified or its equivalent would be available when construction starts (Tr. 151–52). He also indicated that he knew from personal knowledge and had been advised by the Osmundsons' that KDAO has surplus equipment which would be made available to OBC (Tr. 158–59).

29. Mr. Bie tetified that he does not feel that older equipment is necessarily less reliable than new equipment (Tr. 169), or that newer equipment requires fewer repairs and less maintenance than older equipment (Tr. 169). In addition, he does not believe that the quality of sound from used equipment would be inferior to new (Tr. 171); that older equipment, which meets FCC specifications, would reduce the separation between two stereo channels (Tr. 174); or that there would be any reason

[8] Mr. Bie is part owner and manager of Radio and Consulting Engineers (Tr. 137).

to reduce the modulation of used equipment below 100 percent (Tr. 174). Although he conceded that it might be more difficult to get parts for older equipment, he does not feel that this would be the case to any significant degree (Tr. 173).

30. With respect to the specifics of OBC's proposal, Mr. Bie indicated that OBC would use a new antenna which can be purchased for $10,000 (Tr. 154), RF equipment that can be purchased for $11,000 (Tr. 155), and monitoring equipment that can be acquired for $4,000 (Tr. 156); and that certain excess studio equipment, presently owned by OBC, would be available for use at the Ottumwa station, making the $10,000 allowed by OBC for studio equipment adequate for its Ottumwa needs (Tr. 157).

31. OBC estimates its expenses at $70,110.[9] Mr. Bie testified that the estimates were reasonable, and that the equipment specified or like equipment can be secured at the estimated prices (Tr. 148–49; OBC Exhibit 8C). None of the witnesses appearing for ICC contest that used equipment is available and can be used. The difficulties in employing a used antenna, cited by Mr. Bitzer, are not relevant since OBC's intends to acquire a new antenna (Tr. 153–54). Although Mr. Gross testified that a number of items were not specifically accounted for in OBC's estimates, he admitted that some of these items could be included under the general categories set forth in OBC's proposal. In addition, Mr. Gross was not aware that OBC proposed to share equipment and supplies with its co-owned station, KDAO, Marshalltown, Iowa, which would reduce costs in certain areas, or, as noted above, that OBC's proposed general manager would serve without salary and that its principals will be expected to provide employment assistance.

32. OBC's estimates are simply that, estimates. Although ICC considers these estimates to be unrealistic, the testimonies of Mr. Bie, OBC's consulting engineer, and that of Mark Osmundson effectively rebut this contention. Mr. Bie believes these estimates to be reasonable, and Mark Osmundson explained how he arrived at these estimates. The Presiding Judge finds both the cost estimates and the method of arriving at these estimates to be reasonable.

33. Furthermore, OBC possesses a cushion of $29,700. Even assuming that certain cost items have not been accounted for, such as sales tax and promotional expenses, OBC appears to have ample funds to meet these added expenses. Accordingly, the Presiding Judge finds that OBC has a total of $99,870 available to it to meet expenses estimated at the time of the filing of the application to amount to $70,110 and a cushion of in excess of $29,000 to meet unaccounted for expenses. The Presiding Judge con-

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[9] Although OBC revised its cost estimates upward to account for inflation costs, the relevant cost estimates, for our purposes, are those pertinent at the time the estimates were submitted. *Belo Broadcasting Corporation, 51 FCC 2d 1097 (Rev. Bd. 1975).*

cludes, therefore, that OBC has shown that it is financially qualified. The financial issue designated against OBC in the Hearing Designation Order released on June 26, 1980 is resolved in OBC's favor, and it is so ordered.

*Ottumwa Broadcasting Company (OBC)*

34. OBC is a partnership consisting of Audrey G. Osmundson, and 80 percent partner (Tr. 376); Mark K. Osmundson, a 10 percent partner (Tr. 188); and Jean O. Rother, a 10 percent partner (Tr. 100).

*Audrey Osmundson*

35. Audrey Osmundson has been a resident of Memphis, Tennessee for the past 24 years. She has been employed as a teller and secretary, and presently works part-time for Sales and Marketing Executives of Memphis, performing secretarial and other clerical duties (OBC Exh. 1–A, pp. 1–2; Tr. 375). Ms. Osmundson attended Hamilton Business College in Mason City, Iowa (OBC Exh. 1–A).

36. Ms. Osmundson resided in Ottumwa in the mid-fifties. While a resident of Ottumwa, she was a member of the Jaycettes, Welcome Wagon and First Lutheran Church, and an officer in the Newcomers Club and Kings Daughters (OBC Exhibit 1–A). In Memphis, she has been a member of the Symphony League and Park Dale Garden Club, and is presently an active member of the Ascension Lutheran Church (OBC Exhibit 2–A).

37. Ms. Osmundson has no direct broadcast experience, however she assisted in the application process for station KDAO, Marshalltown, Iowa, and has assisted her husband in conducting broadcast seminars in cooperation with the Tennessee Association of Broadcasters (OBC Exhibit 5–A).

38. Ms. Osmundson proposes to devote 10 hours a week to the station as a part-time office manager (Tr. 385). Her duties would be clerical and administrative, including accounting, bookkepping, traffic and copy (OBC Exhibit 6–A).

39. Ms. Osmundson is a 35 percent partner in MTN Broadcasting Company, licensee of station KDAO, Marshalltown, Iowa (OBC Exhibit 3–A; Tr. 195, 377, 439). In addition, she is 24 percent shareholder, secretary/treasurer and director of MTN Broadcasting, Inc., an applicant for a low power television station at Marshalltown, Iowa (Tr. 203, 378, 425–26), and an 80 percent partner in Grundy Center Broadcasting, an applicant for an FM station in Grundy Center, Iowa (Tr. 377).

*Mark Osmundson*

40. Mark Osmundson is currently a resident of Marshalltown, Iowa. He grew up in Memphis, Tennessee, graduated from a local high school, and attended Memphis State University from which he received a BBA degree in Marketing Sales in 1973 (OBC Exhibit 1–C).

41. While in college, Mr. Osmundson worked full time at a TV station in Memphis, and also began a free-lance photography business. After receiving his degree, he went to work at station WCPO-TV, Cincinnati, Ohio. In 1974, he became a marketing representative with Nonconnah Corporate Center, an office/business park development in Memphis, and in 1975, Mr. Osmundson began working on an application for a radio station in Marshalltown, Iowa. He contributed to all aspects of the application process and had responsibility for designing and overseeing construction of the new station and facility when the construction permit was granted. Since 1978, he has been general manager for station KDAO(AM), Marshalltown, Iowa (OBC Exhibit 1–C, pp. 1–2).

42. Mr. Osmundson is a member of the Marshalltown Rotary Club, serving on its Classification Committee, and is a member of the Communication and Retail Committees of Marshalltown's Chamber of Commerce. In addition, he is a member of the Communications Committee for the YM/YWCA, the Central Business District Promotion Committee, the Marshalltown Community Concert Association, the Marshalltown Community Theatre, and the Elmwood Country Club (OBC Exhibit 2–C).

43. Mr. Osmundson plans to devote 25 percent[10] of his time to the new station by assisting the general manager and helping with any other aspects of station operation that may be required (OBC Exhibit 6–C). Mr. Osmundson will continue to reside in Marshalltown, approximately 100 miles from Ottumwa (Tr. 234).

44. Mr. Osmundson is a partner with Audrey Osmundson in MTN Broadcasting Company, a partnership, licensee of the daytime-only broadcast station KDAO in Marshalltown, Iowa. In addition, he is a 15 percent shareholder, president and director of MTN Broadcasting, Inc., an applicant for a low power TV station at Marshalltown, Iowa (Tr. 202–03), and a 10 percent partner in Grundy Center Broadcasting, an applicant for an FM station in Grundy Center, Iowa (Tr. 222).

*Jean Rother*

45. Ms. Rother resides in Memphis, Tennessee (OBC Exhibit 4–B). She is presently employed as a nurse in Memphis (Tr. 102). If OBC is the successful applicant, Ms. Rother will move to Ottumwa with her husband Douglas Rother, OBC's proposed full-time general manager.

46. Ms. Rother has no mass media interests (OBC Exhibit 3–B). She is, however, a principal in the applicant, MTN Broadcasting, Inc., an applicant for a low power TV facility in Marshalltown, Iowa (Tr. 116).

*Auxiliary Power*

47. OBC proposes to include an emergency generator in its station's facilities (OBC Exhibit 7).

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[10] OBC's Proposed Findings, p. 4, equates 25 percent of his time to 10 hours per week.

*Iowa Communications Company (ICC)*

48. ICC is a corporation formed under the laws of the State of Iowa. The shareholders, directoors and officers of ICC are as follows: John H. Bill, director and vice president, and 49 percent shareholder; Howard G. Bill, director, president and treasurer, and a 51 percent shareholder; and Lucille S. Bill, director and secretary (ICC Exhibit 1).

*John H. Bill*

49. John H. Bill presently resides in Fort Worth, Texas. He received a BBA degree in Finance and Economics from Texas Christian University, and has done post-graduate work in accounting and management at the University of Dallas. Mr. Bill will move to Ottumwa if ICC is the successful applicant (ICC Exhibit 2; Tr. 508).

50. While in college, Mr. Bill worked during summer vacations as a disc jockey and copywriter for radio stations KOLM and KOLM(FM) (now KWWK(FM)), Rochester, Minnesota. He also worked in advertising sales for the school newspaper, and as a tour guide for a beer brewing company. After graduation, he became supervisor for public relations for a beer manufacturer, and in 1974 the area manager for sales and marketing for the west Texas market. In 1976 he was promoted by the same employer to Area Manager for the Dallas-Fort Worth area, and in 1978, he became Regional Administrator for Sales and Marketing for the Southwest region. In 1979 he began working for a chain of restaurants as regional sales and marketing manager, and since 1980, he has been marketing representative for another restaurant chain (ICC Exhibit 2, pp. 2–3).

51. Mr. John Bill is a member of the Texas Christian University Alumni Association, the Texas Board of Realtors, the Fort Worth Board of Realtors and the Alumni Association of Lamda Chi Alpha. He was also a board member of the Fort Worth Junior Chamber of Commerce, and a former Jaycee of the Month. In addition, he is a former member of the Tarrant County Convention and Visitors Bureau and the Fort Worth Chamber of Commerce. John Bill is a member of the McKinney Memorial Bible Church in Fort Worth, Texas (ICC Exhibit 2, p. 2).

52. John Bill, while a college student, worked for three summers at stations KOLM and KWWK(FM) as an announcer, writing copy and doing remote broadcasts. More recently, his experience in sales and marketing has included duties involving the purchase of advertising time on radio and television broadcast stations, as well as assisting with media planning and budgeting and the production of radio and television promotions (ICC Exhibit 5, pp. 3–4).

53. John Bill proposes to serve as full-time station manager. He will directly supervise other management, technical, professional and sales employees, and all programming activities. In addition, he will be involved in the production of certain programs and the sale of advertising,

while at the same time carrying out his day-to-day operational responsibilities at the station (ICC Exhibit 6).

54. John Bill has not in the past and does not own any other media interests (ICC Exhibit 2, p. 4; ICC Exhibit 7; Tr. 505).

*Howard Bill*

55. Howard Bill currently resides in Rochester, Minnesota. He was raised in Illinois, attended high school in Peoria, Illinois, and spent two years at the University of Illinois and one year at Bradley University, Peoria, Illinois (ICC Exhibit 3).

56. Howard Bill has been in broadcasting since 1947. He worked initially as a copywriter, merchandise manager and sales representative at station WMBD, Peoria, Illinois, and from 1949 to 1954, he was part owner and commercial manager for station WDZ, Decatur, Illinois. In 1954 he purchased station WBIZ, Eau Claire, Wisconsin, serving as its general manager until 1964[11] when he began the construction and operation of station KOLM, Rochester, Minnesota, and station KWWK(FM), Rochester, Minnesota. Mr. Bill continues to serve as president and general manager of these Rochester stations (ICC Exhibit 3, pp. 1–2).

57. While living in Eau Claire, Howard Bill was involved in the Community Fund, Lions Club, Red Cross, YMCA, and Eau Claire Chamber of Commerce, and was an active member of the First Presbyterian Church. Mr. Bill is presently a member of the Rochester Chamber of Commerce, Lions Club, and the Masonic Lodge, Consistory and Shrine. In addition, Mr. Bill participates in the United Fund campaigns (ICC Exhibit 3, pp. 1–2).

58. Howard Bill served with the Armed Forces Radio Service during World War II as an announcer, disc jockey, newsman and newscaster, and participated in information, news and entertainment programs for American Service personnel. After his discharge from the Army, Howard Bill wrote advertising copy for station WMBD, Peoria, Illinois, and was promoted to merchandise manager. He also edited a monthly merchandise letter and created promotions for the station. Mr. Bill subsequently served as commercial manager for station WDZ, Decatur, Illinois, and developed a sales department for that station, and then served as general manager for station WBIZ(AM), Eau Claire, Wisconsin, from 1954 to 1964. Howard Bill has been president and general manager for stations KOLM and KWWK(FM) since 1964 (ICC Exhibit 5, pp. 1–3).

59. Howard Bill proposes to serve as general manager of the new station. Although he will continue to reside in Rochester, Minnesota, he will devote between 8 to 10 hours a week to the station. Mr. Bill will discuss major decisions with John Bill, the full-time station manager, and

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[11] Howard Bill's interest in WBIZ was sold in 1977 (ICC Exhibit 3, p. 2).

assist in the planning and executing of major operational and programming decisions. Mr. Bill will also be available at all times to advise with respect to the day-to-day operations of the station (ICC Exhibit 6; Tr. 515).

60. Howard Bill is the owner of Olmstead County Broadcasting Company, licensee of stations KOLM/KWWK(FM), Rochester, Minnesota. In addition, he has a 45 percent interest in the permittee of a new FM station in Fergus Falls, Minnesota (ICC Exhibit 7).

*Lucille Bill*

61. Ms. Bill was raised in Illinois and attended Illinois State University in Bloomington, Illinois. From 1954 to 1977, she was an officer and director of WBIZ, Inc., licensee of stations WBIZ-AM/FM in Eau Claire, Wisconsin, and a former officer and director of stations KOLM/KWWK(FM) in Rochester, Minnesota. She is presently employed full time as sales assistant and sales secretary for the Rochester stations (ICC Exhibit 4).

62. Lucille Bill will not be actively involved in the affairs of the proposed station at Ottumwa. Ms. Bill has no ownership interest in any media (ICC Exhibit 4 and 7; Tr. 524).

*Auxiliary Power*

63. ICC will install an emergency generator at its proposed station (ICC Exhibit 22).

*Dean L. Osmundson*

64. By Memorandum Opinion and Order, FCC 81M–1429, released May 7, 1981, the Presiding Judge granted ICC leave to adduce evidence concerning Dean L. Osmundson's participation in the affirs of OBC under the standard comparative issue.

65. Dean Osmundson is the husband of Audrey and the father of Mark and Jean Rother. He is presently general manager of WMC-AM radio, Memphis, Tennessee, a position he has held since 1966 (Tr. 437–38), and is also a 55 percent partner in MTN Broadcasting Company, licensee of station KDAO, Marshalltown, Iowa (Tr. 438).

66. Dean Osmundson denied that he was involved in any way in the preparation of the consturction permit application for OBC (Tr. 442), or OBC's exhibits concerning ascertainment of community needs (Tr. 442). He described his involvement with the OBC as that of a consultant (Tr. 444), testifying that he has served as a consultant for others and he named two specific individuals for whom he has provided such a service in the past (Tr. 487). As OBC's consultant, he indicated that he was asked about categories of community leaders (Tr. 444), conferred with E. W. Bie, OBC's consulting engineer and J. B. Scanlon, an equipment supplier and other suppliers about the costs and availability of equipment for the

proposed station (Tr. 445–46), and with Mr. Perry, OBC's legal counsel (Tr. 459–60). He denies that he communicated with Mr. Perry on behalf of OBC on a regular basis (Tr. 460).

67. Dean Osmundson testified that as consultant to OBC, he reviewed OBC's financial qualifications as proposed by Mark and Audrey Osmundson (Tr. 458, 489), and spoke on several occasions with a loan officer at Union Bank and Trust Company, although he believes that his wife and daughter had the initial contact with the loan officer. He indicated that his several contacts with the loan officer were relative to the Bank's initial and subsequent loan commitments as well as his intention to pledge 500 shares of stock owned solely by him in support of the loan (Tr. 451–52, 459). Mr. Osmundson testified that he also had discussions with Mr. Perry with respect to the fact that additional collateral was available (Tr. 459–60).

68. Dean Osmundson had repeated contacts with both Messrs. Bie and Perry. He went to Bie's office to pick up the environmental statement (Tr. 471), and conferred with Bie about costs of various pieces of broadcasting equipment as well as about the use of new and used equipment (Tr. 445–46). He testified that he sent an equipment advertisement to Perry (Tr. 463, 466), but indicated that the equipment was not necessarily intended for use by OBC (Tr. 464), conveyed ascertainments and engineering communications to Perry and received the FAA notification from Perry (Tr. 471–72), although he testified that Perry did not normally send him documents (Tr. 473), and discussed possible amendments to OBC's application with Perry as well as the possible need for additional ascertainments (Tr. 475–76).

69. Dean Osmundson testified that he never considered putting himself in the OBC application (Tr. 479). He indicated that he elected not to be a part of the application, although he felt that the application would have been enhanced by his participation (Tr. 479–80), so that he could provide his wife Audrey and his children, Mark and Jean, with the chance at a broadcasting career (Tr. 479). He stated that he does not plan to be involved in the management and operation of the station, but will continue to serve as a consultant (Tr. 441).

70. By his own testimony, Dean Osmundson took an active part in securing financing for the station and in putting together the equipment proposal, as well as discussing the possibility of a settlement with Mr. Bill on behalf of OBC's principals (Tr. 483–84). He had no part however in the ascertainment survey or in OBC's programming proposal, although there is some indication in the record that OBC's program proposal is similar to that of KDAO's, which was put together in part by Dean Osmundson (Tr. 495). At issue is whether these activities on bahalf of OBC give rise to the presumption that Dean Osmundson is an undisclosed principal of OBC

who will have an active role in the day-to-day management of the station in the event that OBC is the successful applicant.

71. Dean Osmundson explains his repeated contacts with OBC's legal and engineering counsels on the basis of his long term contact with both individuals as well as his office's proximity to the office of Mr. Bie. It appears clear to the Presiding Judge that both Mr. Bie, the consulting engineer, and Mr. Perry, OBC's legal counsel, considered Dean Osmundson to have a significant voice in OBC's affairs. Both individuals knew that Dean Osmundson's broadcasting experience was far more extensive than that of his wife, daughter and son, the principals of OBC, and that Mr. Osmundson's opinion as to a course of action or a specific proposal would undoubtely carry considerable weight with OBC's principals. These factors however do not negate Dean Osmundson's claim that he is merely a consultant to OBC and not an undisclosed principal.

72. Dean Osmundson explained that he could have been a principal if he had chosen to be one. In addition, he testified that in his opinion, OBC's application would have been enhanced by his involvement as a principal in view of his extensive past broadcasting experience. He indicated, however, that he chose not to be a principal because he wanted to devote his time to pursuits other than broadcasting, and wished to give his wife the opportunity to become actively involved in broadcasting, and to increase his son's interests in broadcasting. Mr. Osmundson's explanation is credible and stands unrefuted. The Presiding Judge finds that his activities on behalf of and interest in OBC's application are consistent both with his role as a consultant and his close family ties with OBC's principals; and that his efforts on OBC's behalf cannot be assumed to indicate an intention on his part to be involved in OBC's affairs after the award of the permit other than as a consultant. The Presiding Judge concludes, therefore, that Dean Osmundson's involvement to date has been that of a consultant, and that Dean Osmundson is not an undisclosed principal in interest or partner.

*Diversification*

*Ottumwa Broadcasting Company (OBC)*

73. Mark Osmundson, a 10 percent partner in OBC, owns a 10 percent interest in MTN Broadcasting Company, licensee of station KDAO, Marshalltown, Iowa.

74. Audrey Osmundson, an 80 percent OBC partner owns 35 percent of MTN Broadcasting Company, licensee of station KDAO, and her husband, Dean Osmundson, owns 55 percent of MTN Broadcasting Company.

75. The Commission treats the mass media interests of husband and wife in combination when applying the multiple ownership rules, unless

shown that such consideration is inappropriate. See *Lady Sarah McKinney-Smith and J. Shelby McCallum*, 59 FCC 2d 398, 36 RR 2d 1699 (1976). In view of the fact that the multiple ownership rules and the diversification criterion applied in comparative broadcast proceedings are facets of the same policy objectives, namely the promotion of the diversification of program and service viewpoints as well as increased competition among the media of mass communications, the principle is to be applied in the same manner for both purposes. See *Klein, Alexander S., Jr.*, 69 FCC 2d 2134, 2141 (Rev. Bd. 1978) *aff'd.* 49 RR 2d 606 (1981).

76. The presumption of common interest which the Commission assumes exists betwen husband and wife for diversification purposes, has not been rebutted in this case. Dean Osmundson's ownership interest in station KDAO will therefore be combined with that of his wife Audrey for the purposes of determining the extent of Audrey Osmundson's interest in other media of mass communications. See *Klein, Alexander S., Jr., supra*, p. 2141. For comparative purposes, therefore, Audrey Osmundson is considered to have a 90 percent interest in MTN Broadcasting Company.

77. Accordingly, on the basis of Mark and Audrey Osmundsons' interest in MTN Broadcasting Company, OBC is considered, for comparative purposes, to control 100 percent of station KDAO, Marshalltown, Iowa.[12]

*Iowa Communications Company (ICC)*

78. Howard Bill, a 51 percent owner of ICC, has a 45 percent interest in a new FM construction permit in Fergus Falls, Minnesota, approximately 400 miles away from Ottumwa. In addition, he owns Olmstead County Broadcasting Company, licensee of KOLM/KWWK(FM) in Rochester, Minnesota, aproximately 200 miles from Ottumwa.

79. John Bill, the 49 percent owner of ICC has no broadcasting or other media interests.

80. The Commission considers, in weighing the respective media interests of the applicants, the size of the particular interest as well as the proximity of existing media interests to the community in question. See *Policy Statement on Comparative Hearings*, 1 FCC 2d 393, 395 (1965). In this case, OBC controls 100 percent of station KDAO, Marshalltown, Iowa, approximately 100 miles from Ottumwa, and ICC's 51 percent principal, Howard Bill owns 100 percent of two stations located approximately 200 miles from Ottumwa and has a non-controlling 45 percent interest in a permittee for a station in Fergus Falls, located 400 miles from

[12] In view of this finding, no consideration need be given to ICC's claim that Jean Rother, who has a 10 percent interest in MTN Broadcasting, Inc. must be charged with a 10 percent ownership of KDAO in view of announced intention to transfer station KDAO from MTN Broadcasting Company to MTN Broadcasting, Inc.

Ottumwa. All of ICC's existing media interests are located in the State of Minnesota.

81. None of the media interests of either applicant can be considered local for comparative purposes. Although OBC's station KDAO is located in the Stte of Iowa, Mashalltown is approximately 100 miles from Ottumwa. ICC's media interests which are owned by its 51 percent principal are located in Minnesota, approximately 200 and 400 miles from Ottumwa. ICC's percentage of interest in these stations is less and the distances greater; however, the number of ICC's media interests totals three, two of which are wholly owned by ICC's controlling principal as compared to OBC's wholly owned single media interest.

82. As noted above, none of the exiting media interests pertinent to this proceeding are located in the city of license and none have been shown to be within the proposed service area. It appears, therefore, that in this case the more relevant Factors for diversification purposes are the number of interests and the percentages of ownership held by each applicant. OBC, for comparative purposes, controls 100 percent of station KDAO, and 51 percent of ICC owns 100 percent of stations KOLM and KWWK(FM)d, Rochester, Minnesota, and 45 percent of the permittee for a station in Fergus Falls, Minnesota. The applicants appear on the basis of these considerations to be almost equal; however, the Presiding Judge concludes, weighing their respective media interests in the balance, that ICC's 51 percent interest in two broadcast stations and its 45 percent noncontrolling interest in two broadcast stations and its 45 percent noncontrolling interest in another station when compared to OBC's 100 percent interest in one broadcast station located approximately 100 miles from the city of license entitles OBC to a slight diversification preference.

*Integration*

*Ottumwa Broadcasting Company (OBC)*

83. OBC is not entitled to any integration credit. Jean Rother proposes no significant involvement in the day-to-day operation of the station. Although Audrey and Mark both propose to devote some time to the station, Audrey will spend only 10 hours a week, and those hours will be spent on purely clerical duties, and Mark, although he will devote a substantial amount of time to the station initially, plans to devote only 10 hours a week to the station on a permanent basis.[13] In addition, Audrey who presently resides in Memphis, and Mark, a resident in Marshalltown, Iowa, have no intention of moving to Ottumwa in the event that OBC is the successful applicant.

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[13] OBC's Proposed Findings, pp. 3–4.

*Iowa Communications Company (ICC)*

84. John Bill, the 49 percent owner of ICC, will become fulltime station manager at Ottumwa, managing all aspects of the day-to-day operation of the station. ICC is therefore entitled to a 49 percent quantitative integration credit which is enhanced slightly by the fact that John Bill plans to move to Ottumwa. Mr. Bill's broadcast experience is *de minimis* and has no effect, positive or negative, on the quality of his integration.

*Auxiliary Power*

85. Both applicants propose to install an auxiliary source of power. Neither applicant is therefore entitled to a comparative merit.

*Conclusion*

86. Although OBC is entitled to a slight diversification preference, it plans no integration of ownership. ICC will integrate on a full-time basis its 49 percent owner as general manager with day-to-day policy making responsibilities. Furthermore, John Bill will reside in Ottumwa, and presumably will acquire a knowledge of and interest in the community. The strong preference for ICC's proposed 49 percent integration, which is slightly enhanced by John Bill's proposed local residence, far outweighs the slight diversification preference awarded OBC. Accordingly, the Presiding Judge is of the opinion that ICC will provide the best practicable service, and it will receive the permit for the new FM station in Ottumwa, Iowa.

*Rulings*

IT IS ORDERED that the Motion to Strike filed by Iowa Communications Company on September 10, 1981 IS DENIED.

AND IT IS FURTHER ORDERED that unless an appeal from this Initial Decision is taken by a party, or the Commission reviews this Initial Decision on its own motion in accordance with the provisions of Section 1.276, 47 C.F.R. 1.276, the application of Iowa Communications Company (BC Docket No. 80–307, File No. BPH–790328AQ) for a construction permit to operate a new FM station in Ottumwa, Iowa on Channel 224A IS GRANTED; and the application of Audrey G. Osmundson, Mark K. Osmundson and Jean O. Rother d/b/a Ottumwa Broadcasting Company (BC Docket No. 80–306, File No. BPH–790327AB) IS DENIED.[14]

FEDERAL COMMUNICATIONS COMMISSION

Joseph P. Gonzalez
Administrative Law Judge

[14] In the event exceptions are not filed within 30 days after the release of this Initial Decision, and the Commission does not review the case on its own motion, this Initial Decision shall become effective 50 days after its public release pursuant to Section 1.276(d).

License, Renewal of Renewal
Application for renewal of license granted. Commission found no unresolved substantial or material question of fact as to the basic qualifications of licensees.
-*Radio WAVS, Inc.*
BC Docket No. 80–71

FCC 82–537

**BEFORE THE**

# FEDERAL COMMUNICATIONS COMMISSION

**WASHINGTON, D.C. 20554**

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| In re Application of<br><br>RADIO WAVS, INC.<br><br>Fort Lauderdale, Florida<br>BC DOCKET NO.<br>80–17<br>File Nos. BR–4841 and BR–781003UB | For Renewal of<br>License of WAVS |

*Appearances*

*B. Jay Baraff, James A. Koerner, Aaron Shainis*, and *Lee J. Peltzman* (Baraff, Koerner, Olender & Hochberg, P.C.) on behalf of Radio WAVS, Inc.: *Richard Riehl* (Haley, Bader & Potts) on behalf of Gore Broadcasting of South Florida, Inc.; *Samual Miller* (MIller & Fields) on behalf of Celebrities, Inc.; and *Charles W. Kelley* and *William D. Silva* on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

DECISION

Adopted: *December 2, 1982; Released: December 10, 1982*

BY THE COMMISSION:

1. Radio WAVS, Inc. is the licensee of Station WAVS, Fort Lauderdale, Florida. By Order and Notice of Apparent Liability, adopted January 16, 1980, we consolidated the above captioned renewal application with a then pending application for the assignment of Station WAVS to Gore Broad-

casting of South Florida, Inc. The consolidated applications were designated for hearing on the following issues:[1]

(a) Whether, in light of all the facts and circumstances pertaining thereto, the license for Station WAVS, or any rights thereunder, were transferred, assigned or disposed of, by transfer of control of the licensee corporation or otherwise, without a finding by the Commission that the public interest, convenience and necessity would be served thereby, in violation of Section 310(d) of the Communications Act of 1934, as amended.

(b) To determine whether Radio WAVS, Inc., and/or Gore Broadcasting of South Florida, Inc., and/or any of the management officials of either of the said corporations misrepresented facts or were lacking in candor with the Commission.

(c) To determine whether, in the light of evidence adduced under the foregoing issue, Radio WAVS, Inc., possesses the requisite qualifications to be, or to remain a licensee of the Commission, and whether a grant of its application for renewal of license would serve the public interest, convenience and necessity.

(d) If issue (c) is resolved favorably to Radio WAVS, Inc., to determine whether Gore Broadcasting of South Florida, Inc., possesses the requisite qualifications to become the licensee of Station WAVS and whether a grant of the captioned application for assignment of license would serve the public interest, convenience and necessity.[2]

Subsequently, the licensee sought, and was granted, authority to sell Station WAVS to minority owned SACN, Inc., pursuant to our distress sale policy.[3] The sale was never consummated,[4] however, and the proceeding was returned to the Administrative Law Judge for evidentiary hearings on the designated issues. After discovery had been completed,[5] but

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[1] FCC 80–25, released February 8, 1980, 44 FR 9105, published February 11, 1980, granting in part Celebrities, Inc.'s Petition to Deny the proposed assignment of Station WAVS to Gore Broadcasting of South Florida, Inc. on the ground that Gore had assumed *de facto* control of Station WAVS, in violation of Section 310(d) of the Communications Act. By Order, FCC 80M–741, the ALJ granted Gore's April 24, 1980 Motion to Dismiss the assignment application.

[2] At the request of WAVS, a meritorious programming issue was added. *See* Memorandum Opinion and Order, FCC 80M–590, released April 10, 1980.

[3] *Radio WAVS, Inc.*, 85 FCC 2d 1018 (1981).

[4] The application for assignment of Station WAVS to minority owned SACN, Inc. was dismissed on September 21, 1981.

[5] Extensive discovery was instituted by all parties to this proceeding. *See* Celebrities' March 17, 1981 Motions for Production of Documents with respect to Gore and with respect to WAVS; WAVS' March 25, 1981 Interrogatories to the Broadcast Bureau; the Broadcast Bureau's Motion for Production of Documents, Request for Admissions, and Interrogatories to WAVS; Gore's March 25, 1980 Interrogatories and Motion for Production of Documents to Celebrities; Gore's Motion for Production of Documents and Interrogatories to the Broadcast Bureau; and the Broadcast Bureau's March 25, 1981 Request for Admissions, Motion for Production of Documents and Interrogatories to Gore. Discovery affidavits from Jordan Ginsburg, Harold Gore, Barry Banther, Maxine Feller (Ginsburg's attorney), Ramon Hooper, and Peter Fulton attest to the accuracy of information submitted by Radio WAVS and Gore Broadcasting. Thus, we will rely on this information to the same extent that we would rely on sworn testimony.

before the hearing had commenced, the Administrative Law Judge considered and denied an unopposed Motion for Summary Decision.[6] Noting that all the parties appeared to agree that an evidentiary hearing was unnecessary, we ordered the entire record certified to use for review.[7] Having the record in this proceeding before us, on our own motion, we will examine the facts and circumstances concerning the alleged transfer of control of Station WAVS to Gore Broadcasting of South Florida Inc, and determine whether there remains substantial and material questions of fact relating to the conduct of either WAVS or Gore[8] which require further evidentiary proceedings on this matter.[9]

2. Jordan E. Ginsburg, Scott Ginsburg, and Roy Bresky have been the principal owners of Station WAVS since 1976. On August 8, 1978, the licensee of Station WAVS agree to sell the station, which had been losing money since it was first acquired in 1976, to Gore Broadcsting. Harold Gore, the president and 80% owner of Gore, is an experienced religious broadcaster and the controlling stockholder of a number of stations which broadcast religious programming.[10] The designation of an unauthorized transfer of control issue against Radiod WAVS and against Gore Broadcasting was based primarily on the licensee's decision to change WAVS from a classical music to a religious station and the role which Gore and Barry L. Banther played, during the pendency of the assignment application, in effectuating the format change. Acting as "consultants," Gore and Banther, the general manager of Station WINQ, alleged began reorganizing station management and personnel, and were apparently instrumental in the hiring of Ramon A. Hooper. In his capacity as the new general manager of WAVS, Hooper hired Kevin A. McKenzie, a former employee of Station WINQ, as well as others who had been associated with Gore. Furthermore, there was some question as to Hooper's loyalty to WAVS' owner Jordan Ginsburg. Additional support for the charge that Gore had prematurely assumed control of the station was found in entries in Gore's ledger books indicating that he had paid some of WAVS' expenses.

3. Harold Gore's September 11, 1978 agreement to buy 15 shares of WAVS stock (5%) from Roy Bresky for $16,000 led to the specification of a

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[6] *Radio WAVS, Inc.*, FCC 81M–3855, released December 7, 1981. Under the circumstances of this case, where no appeal has been authorized by the Administrative Law Judge, this interlocutory ruling is not subject to appeal, and we decline to review it on our own motion. *See* Sections 1.251(e) and 1.301(b) of the Rules.

[7] *Radio WAVS, Inc.*, FCC 82–69, released February 10, 1982.

[8] Although the assignment application has been dismissed and Gore Broadcasting of South Florida, Inc. has been disbanded, its controlling shareholder has an interest in six broadcast stations.

[9] On August 13, 1982 WAVS filed a Request for Expedited Consideration which we will grant to the limited extent reflected herein.

[10] Harold Gore is the controlling stockholder of the following licensee corporations: Gore Broadcasting, Inc. (WTOW and WGOR); Gore Broadcasting, Inc. of California (KLIT); and Gore Broadcasting Inc. of Florida (WINQ). Gore Broadcasting Inc. of Cincinnati (WZIP) is a wholly owned subsidiary of Gore Broadcasting Inc. Gore is also a 50% owner of Force Communications, Inc. licensee of station KBZT, San Diego, California, which follows a middle of the road format.

misrepresentation issue against the licensee and against Gore. Bresky and Gore explained that the sale was designed to enable Gore to take a more active role in the station's format change. In fact, the parties represented in their Joint Opposition to the Petition to Deny that the format change was suggested by "Gore, a 5% shareholder." It appeared, however, that the decision to change formats was made at least one month before Gore acquire the stock. Moreover, there was conflicting representations as to when the sale of stock Gore actually took place, and whether the $16,000 was ever paid. An ownership report for Station WINQ, dated September 1, 1978 and signed by Harold Gore, indicated that he was a 5% owner of WAVS. Subsequently, on December 29, 1978, after the Petition to Deny had been filed, Gore's counsel informed the Commission that this information was incorrect, and that Gore acquired his interest in WAVS on September 11, 1978. Yet, according to WAVS' October 16, 1978 Ownership Report, the stock was not transferred to Gore until September 15, 1978, and $16,000 had been paid for the stock. Radio WAVS, Inc. corporate minutes indicate, however, that the transaction was ratified by the Directors on September 11, 1978, but that Bresky continued to vote the 15 shares until January 31, 1979. Moreover, Ginsburg conceded in a letter, dated July 10, 1979, that the $16,000, which had been promised as consideration for Bresky's 15 shares, had not been paid.

4. Having examined the entire record in this proceeding in light of the allegations which led us to designated WAVS' renewal application and the then pending assignment application for hearing, we conclude that no substantial and material questions of fact remain as to the basic qualifications of either Radio WAVS, Inc. or Gore Broadcasting of South Florida. The ample undisputed evidence developed through discovery satisfies us that Gore did not assume *de facto* control of the operation of Station WAVS without Commission authorization in violation of Section 310(d) of the Communications Act and that neither party made deliberate misrepresentations of fact to the Commission.[11] Accordingly, we see no need to continue with an evidentiary hearing on these questions. We also find no basis for imposing a forfeiture against the licensee. Thus, we will grant the renewal application for Station WAVS, Fort Lauderdale, Florida, and terminate this proceeding.

## *UNAUTHORIZED TRANSFER OF CONTROL*

5. *The Format Change.* In designating an unauthorized transfer of control issue against the licensee, we were concerned by the role which

[11] We believe that the information obtained through the discovery process is sufficient, under the unusual circumstances of this case, to resolve the allegations raised in the Petition to Deny, and that there is no need for further evidentiary inquiry into these matters. Accordingly, we are persuaded that the due and timely execution of our functions imperatively and unavoidably require that no initial decision be issued. Pursuant to the provisions of Section 1.274(a) of our Rules, we hereby relieve the Administrative Law Judge of the responsibility for preparing and filing such a decision.

the proposed assignee played in the conversion of WAVS from a classical music to a religious format. We were particularly troubled by the facts that Gore is an experienced religious broadcaster, that all but one of his stations follow this format, and that he intended to operate WAVS as a religious station following the assignment. Under these circumstances, we believed that a substantial and material question of fact existed as to whether Harold Gore, having contracted to buy WAVS from Jordan Ginsburg, assumed premature control of the station in order to effectuate the format change. Nevertheless, it appears that it was the licensee, and not Gore, who ultimately made the decision to change the format prior to the assignment, that the change was made to avoid a continuous financial drain on the licensee during the pendency of the assignment application, and that Gore reluctantly became involved in implementing the change at the request of the licensee.

6. WAVS had sustantained such substantial losses that the licensee had even considered taking it off the air.[12] Although a religious format had previously been suggested as a more profitable alternative for the station,[13] Ginsburg had not considered making the change himself because he had assumed that the initial cost of changing the format would exceed his present losses. Gore's proposal to buy WAVS included cash flow projections for operation of the station with a religious format. According to these projections, which were submitted to Ginsburg on August 4, 1978,[14] the station's entire operating budget would not exceed current out-of-pocket expenses, and the station could become solvent within approximately one month after new format was instituted. These calculations convinced Ginsburg and Bresky that it would be to their advantage to make the format change immediately;[15] and effective October 3, 1978 the station' format was changed.[16] Furthermore, it appears that under the terms of the sales contract, an immediate format change would benefit the licensee, rather than the prospective purchaser. Gore had agreed to make payments out of the future profits of the station. Therefore, it was in the seller's interest that the station, which had been losing money at an average of $6,500 per month, become profitable as soon as possible.

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[12] Radio WAVS, Inc.'s Response to Broadcast Bureau's Interrogatories, No. 5, p. 12. Ginsburg also stated in his December 15, 1978 Affidavit filed in response to the Petition to Deny that WAVS has lost an average of $6,500 per month as a classical music station.

[13] Prior to negotiating the sale to Gore, Ginsburg had received an offer to buy the station from Ray Kassis. Kassis also intended to institute a religious format at WAVS. Response to the Broadcast Bureau's Request for Admissions No. 1, pp. 10–12. Joseph Amaturo and Gordon Sherman, who had built WAVS, also believed that a religious format would be profitable for a daytime-only AM station like WAVS in that particular market. Radio WAVS, Inc.'s Response to Broadcast Bureau's Interrogatories, No. 5, p. 10.

[14] *Id.* p. 12.

[15] *See* generally Radio WAVS, Inc.'s Response to Broadcast Bureau's Interrogatories, No. 5.

[16] Letter, dated October 26, 1978, informing the Commission of the change.

7. Once Ginsburg and Bresky decided to institute an immediate format change, they asked Gore for assistance. By their own admission, they sought to entice Gore into taking a more active role in implementing the change by offering him an immediate 5% interest in the station.[17] Initially, Gore declined to become involved. It was only after discussing the matter with his attorney that Gore agreed to advise the licensee on matters relating to the change.[18] Gore understood from talking to his attorney that he was free to give such advice so long as he did not become involved in the day-to-day operation of the station, the ultimate firing and hiring of personnel, or the station's financial affairs.[19] Although Gore was not paid for his services, the immediate 5% interest in the station was offered as consideration for Gore's agreement to assist the station in implementing the format change.[20] This arrangement enabled the station to obtain Gore's services as a consultant at no out-of-pocket cost to Ginsburg and Bresky.

8. We have advised prospective purchasers to refrain from becoming prematurely involved in the station's operating policies including the execution of a format change.[21] Nevertheless, we have permitted limited participation in a station's affairs so long as the licensee does not abdicate managerial responsibility for the station's operation.[22] Here, Ginsburg and Bresky made the decision to change the station's format in order to avoid a continuous financial drain on the licensee while the assignment application was pending. Moreover, Gore reluctantly agreed to assist the licensee in implementing the immediate change only after consulting his attorney. Furthermore, Gore's receipt of a 5% interest in the station for his services rebuts the inference that Gore became involved in order to effect a premature change to the format which he intended to utilize following the assignment. Under these circumstances, neither the fact that the format change was instituted prior to the assignment[23] nor the

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[17] Radio WAVS, Inc.'s Response to Broadcast Bureau's Interrogatories, No. 7, p. 20.

[18] Affidavit of Michael H. Bader, November 11, 1981, and attached as Exhibit No. 2 to the Broadcast Bureau's Comments in Support of Motion for Summary Decision.

[19] Radio WAVS, Inc.'s Response to Broadcast Bureau's Interrogatories, No. 5, pp. 14–15.

[20] Radio WAVS, Inc.'s Response to Broadcast Bureau's Interrogatories, No. 7, pp. 20–21.

[21] *Chief Washakie TV*, 46 RR 2d 1594, 1600 (1980); *Fine Arts Broadcasting, Inc.*, 57 FCC 2d 108, 111 (1975); *Phoenix Broadcasting Co.*, 44 FCC 2d 838, 839–40 (1973).

[22] *Compare Chief Washakie TV*, 46 RR 2d 1594, 1600 (1980), where the licensee hired the spective purchaser as a "sales person" but there was no suggestion that he had authority over the station's personnel, programming or operating policies; with *Fine Arts Broadcasting, Inc.* 57 FCC 2d 108, 111 (1975), where we permitted the licensee to hire the prospective purchaser as general manager because of the station's dire financial status. In *Fine Arts* we indicated that, despite precautions to insulate the buyer from such decisions, the assumption of a managerial position would ordinarily be fraught with danger of premature transfer of control.

[23] The Commission has determined, as a matter of policy, that a licensee's decision to change a station's format is not an issue in transfer cases. *FCC* v. *WNCN Listeners Guild*, 101 S. Ct. 1266 (1981). *Cf. KNOK Broadcasting, Inc.*, 29 FCC 2d 47, 51–52 (1971), where we held that a format change, standing alone, did not raise a question of unauthorized transfer of control. There the licensee, subsequent to the dismissal of an assignment application, adopted the format which the proposed assignees had intended to utilize; transferred 25% of the station's stock to them; and retained them as consultant, general manager, and president of the station.

fact that the assignee agreed to assist the licensee in effectuating that change are sufficient, in our view, leaves us with an unresolved question of fact concerning an unauthorized transfer of control.

9. *Programming Decisions.* It is undisputed that, once the decision to change the station's format was made, Gore and Gore's employee, Barry L. Banther, assisted the licensee in obtaining religious programming for the station.[24] However, after reviewing the record before us, we are not persuaded that this assistance represents such involvement in the operation of the station as to leave us with question of an unauthorized transfer of control. As noted above, Harold Gore is the licensee of five stations which broadcast religious programs. At the time that Gore agreed to buy WAVS, Barry L. Banther was in the process of converting the newly acquired WINQ to a religious format. Gore agreed that Banther would contact, on behalf of Ginsburg, those national programming suppliers which he would have otherwise contacted either for WINQ or in preselling programs for WAVS.[25] Gore and Banther also agreed to evaluate any program supplier which contacted WAVS directly, in terms of the financial stability of the supplier and the quality of its program offerings.[26] Thus, it appears that Ginsburg sought and received Gore's assistance in acquiring religious programs for WAVS,[27] but that the licensee did not abdicate responsibility for the station's programming.[28] Gore and Banther were responsible for initiating the acquisition of only nine programs which were presented on WAVS during the pendency of the assignment application, with the remainder being primarily negotiated by the general manager.[29] Although Gore and Banther were consulted as to the financial stability of the supplier, the nature of the program, and other pertinent matters, it was the station manager, Ramon Hooper, who conducted the negotiations on behalf of the station and who made the initial determination as to whether the program proposal should be accepted. Moreover, Ginsburg approved the terms and conditions of all

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[24] Response of Gore Broadcasting of South Florida, Inc. to Broadcast Bureau's Interrogatories, No. 16, pp. 25–27.

[25] Gore also provided the basic format design which indicated the type of religious programs to be aired during different parts of the day; sample program logs; staffing plans; a proposed rate card; and probably an outline for contracting local church groups and businessmen. Radio WAVS Inc.'s Response to Broadcast Bureau's Interrogatories, No. 15, pp. 32–36.

[26] *Id.* at 33. *See also* Response of Gore Broadcasting of South Florida, Inc. to Broadcast Bureau's Interrogatories, No. 16, p. 26.

[27] Ginsburg was also familar with and had been apprised by others of the success of Gore's operations. Response of Gore Broadcasting of South Florida, Inc. to Broadcast Bureau's Interrogatories, No. 4(a), pp. 11–12.

[28] Conditioned upon Commission approval of the transfer, Banther had already reserved some programs for Gore, such as Creative Communications Association music service. When Ginsburg made the decision to change the format, Banther simply renegotiated the contract for its immediate use by Ginsburg. *Id.* at 12. *See also* Response of Gore Broadcasting of South Florida, Inc. to Broadcast Bureau's Interrogatories, No. 2(a), p. 7, and No. 16, pp. 25–27.

[29] Response of Gore Broadcasting of South Florida, Inc. to Broadcast Bureau's Interrogatories, No. 16, pp. 26–27.

programs in advance, including those where Banther had initiated the contact on behalf of WAVS, and either Ginsburg or his general manager signed all contracts in advance.[30]

10. In addition to securing appropriate national programming for the station, Gore and Banther in their capacity as consultants to WAVS, also advised Ginsburg as to whether certain local, regional and existing programming was appropriate fare for a religious station. Ginsburg, however, did not follow all of their programming recommendations. He refused, for instance, to discontinue any program which was generating revenue unless it was illegal, patently offensive, or in bad taste.[31] Under these circumstances, it appears that Gore's involvement in programming decisions was merely advisory and that the licensee maintained complete control over the station's programming at all times.[32] Thus, there is no further need to question whether the licensee relied on the background and experience of the prospective purchaser in selecting programming for the new format to such an extent that the latter became intimately involved in the station's programming policies.

11. *Personnel Decisions.* Initially, we were troubled by Gore's apparent role in personnel matters. However, the information obtained through discovery indicates that Gore never had the power to hire of fire employees at WAVS and that the licensee remained responsible for all personnel decisions during the pendency of the assignment application. At the time that Ginsburg negotiated the sale of WAVS, the positions of general manager and traffic person were vacant. Having decided to adopt a religious format, Ginsburg sought Gore's advice in filling the two vacancies.[33] At Ginsburg's request, Banther interviewed Sherrill Gibbons, who had previously worked as the traffic person/billing clerk at a religious television station. Although Ginsburg ultimately accepted Banther's recommendation and hired Gibbons, he personally set the terms of her employment.[34] Banther and Gore interviewed Ramon A. Hooper for the position of general manager. Hooper had been recommended to Gore for a

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[30] Response of Gore Broadcasting of South Florida, Inc. to Broadcast Bureau's Interrogatories, No. 4(a), p. 12, and No. 16, p. 27.

[31] The Indianapolis "500" race, a celebrities interview program, and a show which gave away free tickets to massage parlors and adult entertainment clubs were either placed on the air or retained. Response to Gore Broadcasting of South Florida, Inc. to Broadcast Bureau's Interrogatories, No. 14, p. 24.

[32] *Complete Phoenix Broadcasting Co.*, 44 FCC 2d 838, 839 (1973), where the licensee relied on the buyer's advice as to programming matters to such an extent that the buyer became intimately involved in the station's program policy on a day-to-day basis.

[33] Gore Broadcasting of South Florida, Inc.'s to Broadcast Bureau's Request for Admissions, No. 5, p. 10; and Gore Broadcasting of South Florida, Inc.'s Response to Broadcast Bureau's Interrogatories, No. 2(a), p. 5.

[34] Radio WAVS Inc.'s Response to Broadcast Bureau's Interrogatories, No. 1, pp. 5-6; and Gore Broadcasting of South Florida, Inc.'s Response to Broadcast Bureau's Interrogatories, No. 8, pp. 20–21.

possible position at WAVS once the assignment application was approved. However, Hooper had had no previous experience with a religious format and, therefore, was not Gore's first choice for the job.[35] Nevertheless, Gore indicate that he believed that with proper training Hooper would be an adequate general manager. Ginsburg personally interviewed Hooper and, following Gore's recommendation, hired Hooper. Ginsburg's reasons for hiring Hooper, who was from Fort Lauderdale, were largely financial. In view of the pending assignment, Ginsburg did not want to pay for a more experienced manager, and he wanted to avoid the additional expense of bringing a manager from out of town.[36] Once again, moreover, it was Ginsburg, and not Gore, who set the terms of Hooper's employment.[37]

12. Except for Kevin Mckenzie and Peter Fulton, none of the twenty people who were hired to work at the station in the period after the sales agreement was signed but before this proceeding was designated for hearing any previous connection with Harold Gore.[38] McKenzie, an employee of the previous owner of Station WINQ, was retained as a part-time announcer for a brief period at WINQ after Gore took over its operation.[39] When McKenzie's employment with WINQ was terminated, Banther called Hooper and recommended that he be employed at WAVS. Based on interviews with Hooper and Ginsburg, McKenzie was hired to fill a vacancy at WAVS.[40] Peter Fulton is a broadcast consultant who was regularly retained to assist in the preparation of various FCC fillings for Gore Broadcasting; at Gore's recommendation, Ginsburg hired Fulton to assist in preparing WAVS' portion of the assignment application, and in bringing the station into compliance for renewal.[41]

13. Aware that the station could operate with a smaller staff under the new format, Ginsburg asked Banther and Gore to interview the existing staff and make recommendations as to who would be best suited for employment at a religious station. However, none of these recommen-

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[35] Gore would have preferred to hire a manager with a religious broadcasting background. To this end, Banther had contacted two such broadcasters: Boyce Lancaster from Louisville, Kentucky and Bill Babcock from Calfornia. Neither possibility had been mentioned to Ginsburg, however, because Ginsburg had indicated that he was unwilling to pay the additional expense of bringing a manager from out of town. Gore Broadcasting of South Florida, Inc.'s Response to Broadcast Bureau's Interrogatories, No. 2(a), pp. 5–6 and No. 12, pp. 22–23.

[36] Affidavit of Jordan Ginsburg, dated October 21, 1981.

[37] Radio WAVS, Inc.'s Response to Broadcast Bureau's Interrogatories, No. 1, pp. 2–5; Response of Gore Broadcasting of South Florida, Inc. to Broadcast Bureau's Interrogatories, No. 8, pp. 17–20.

[38] Radio WAVS, Inc.'s Response to Broadcast Bureau's Interrogatories, No. 1, p. 2.

[39] *Id.* at 6–7; Gore Broadcasting of South Florida, Inc.'s Response to Broadcast Bureau Interrogatories, No. 8, pp. 21–22.

[40] Radio WAVS, Inc.'s Response to Broadcast Bureau's Interrogatories No. 1, p. 6.

[41] Response of Gore Broadcasting of South Florida, Inc. to Broadcast Bureau's Interrogatories, No. 2(a), pp. 8–9. Fulton was also retained to work on the assignee's portion of the assignment application for which he was paid separately by Gore. Gore paid all of Fulton's travel expenses to Fort Lauderdale. Ginsburg, however, paid Fulton for all the work which he did for WAVS.

dations were followed, and all of the terminations which occurred during this period were based on independent performance appraisals conducted by either Ginsburg or Hooper.[42] Thus, Gore played a limited role in the employment of two out of a total of twenty people who were hired for full-time positions during the pendency of the assignment application. However, he did not make the final determination or set the compensation for these two employees, and he was not responsible for any of the terminations which occurred during this period. Under these circumstances, the fact that Gore recommended Sherrill Gibbons, Ramon Hooper, Kevin McKenzie, and Peter Fulton for employment at the station is insufficient, in our view, to raise a question of fact as to an unauthorized transfer of control.[43]

14. In addition to Gore's role in hiring employees, we were also concerned at the time of designation with the apparent loyalty of WAVS general manager Ramon A. Hooper to Gore. We were particularly troubled by the facts that Hooper, who was hired at Gore's recommendation, consulted Gore or Banther concerning the operation of WAVS and attempted to draw Gore into various disputes with Ginsburg. However, we are convinced that, in light of the evidence developed on discovery, the licensee did not abdicate his responsibility for the day-to-day operation of the station to either Gore or Hooper, that Hooper was an employee of Ginsburg, and that whatever loyalty Hooper may have had to Gore was misplaced. As noted above, Gore recommended Hooper for the position of general manager but had nothing to do with the ultimate decision to hire him. Moreover, Gore would have preferred to have hired a manager with a religious broadcasting background.[44] Nevertheless, he assured Hooper that he would be retained following the assignment provided, however, that his performance was satisfactory to Ginsburg.[45] In view of the pending assignment, it would have been virtually impossible for WAVS to obtain the services of a competent manager without such assurances. Under these circumstances, we cannot fault either Gore or Ginsburg on this basis, particularly since Hooper's retention depended upon his performing to the satisfaction of the licensee.

15. We also are unable to draw adverse inferences from Hooper's various consultations with Gore and Banther. Because Hooper did not have a religious broadcasting background, Ginsburg instructed Hooper to

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[42] Radio WAVS, Inc.'s Response to Broadcast Bureau's Interrogatories, Nos. 2–3, pp. 7–8; Responses of Gore Broadcasting of South Florida, Inc. to Broadcast Bureau's Interrogatories, No. 2(a), pp. 3–4.

[43] *See Fine Arts Broadcasting, Inc.*, 57 FCC 2d 108, 110–11 (1975), where we found no question of unauthorized control when the prospective purchaser, having been hired as general manager, recommended three individuals who were later hired by the licensee.

[44] Response of Gore Broadcasting of South Florida, Inc. to Broadcast Bureau's Interrogatories, No. 12, pp. 22–23; and No. 20(d), p. 30.

[45] Response of Gore Broadcasting of South Florida, Inc. to Broadcast Bureau's Interrogatories, No. 20(d), p. 30.

consult Banther and Gore for guidance.[46] Nevertheless, there was no regular contact between Gore and Hooper, and Banther, who was located in Tampa, did not supervise Hooper on a daily basis. Moreover, the contacts were usually initiated by Hooper, were confined to matters, relating to the new format, and diminished sharply after Hooper had been at WAVS for about six weeks and well before the Petition to Deny was filed on December 4, 1978.[47] Furthermore, this initial supervision of Hooper was necessitated by Ginsburg's decision to change the station's format and to do so with an inexperienced manager. As noted above, the decision to adopt a religious format was made by the licensee and was motivated by financial considerations. Under these circumstances, we cannot find that Banther's limited supervision of Hooper for a period of six weeks leaves us with a question of an unauthorized transfer of control, particularly in view of the fact that, but for Ginsburg's decision to change the format prior to the assignment, Gore would have hired a more experienced manager.

16. Likewise, Hooper's various disputes with the licensee do not leave us with a substantial and material question of fact regarding an unauthorized transfer of control. Initially, Ginsburg was dissatisfied with Hooper's performance, and was tempted to fire him. He did not do so because of cost considerations and because of improvements in Hooper's performance.[48] In the interim, however, there were a number of disputes concerning Hooper's compensation and duties at the station. When Hooper attempted to involve Gore in these disputes, he was repeatedly warned that, until the assignment was consummated, he was responsible to Ginsburg and that his retention following the assignment would depend on whether his performance had been satisfactory to Ginsburg before the assignment.[49] During one of these disputes Hooper wrote Gore a letter indicating that he had been hired as one of Gore's consultants to Ginsburg and that he had been assured that he would not be working directly for Ginsburg.[50] While initially causing us concern about Gore's role at the station, the unsworn statement in the letter is inconsistent with other evidence developed during discovery. The letter to Gore was written after both Ginsburg and Banther had expressed dissatisfaction with Hooper's performance at WAVS. The claim that Hooper was hired as a consultant appears to contradict information indicating that Hooper had no experience as a religious broadcaster and that, had Ginsburg not decided upon an immediate format change, Gore would have hired a more

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[46] Gore Broadcasting of South Florida, Inc.'s Response to Broadcast Bureau's Request for Admissions, No. 7, pp. 10–11; and Radio WAVS, Inc.'s Response to Broadcast Bureau's Interrogatories, No. 1, p. 4.

[47] Response of Gore Broadcasting of South Florida, Inc. to Broadcast Bureau's Interrogatories, No. 18, pp. 27–29; Radio WAVS, Inc.'s Response to Broadcast Bureau's Interrogatories, No. 15, pp. 33–36.

[48] Affidavit of Jordan Ginsburg, dated October 21, 1981.

[50] Bill of Particulars, pp. 4–5.

experienced manager. Moreover, Hooper has attested to the accuracy of the responses of both Gore Broadcasting and Radio WAVS to discovery requests concerning Hooper's employment at the station.[51] This information indicates that although Ginsburg instructed Hooper to consult Gore and Banther concerning the format change, it was Ginsburg, and not Gore or Banther, who was ultimately responsible for supervising Hooper. In addition, Ginsburg has explained Hooper's retention despite the numerous disputes and his initially poor performance. Thus, we do not believe that Hooper's relationship with Ginsburg leaves us with an unresolved question of fact warranting further evidentiary proceedings.[52]

17. *Financial.* Finally, it does not appear that Harold Gore advanced any funds to pay the station's bills or otherwise became involved in its financial affairs while the assignment application was pending. The ledger books of Gore Broadcasting do contain two entries which suggested that Gore had expended funds on behalf of WAVS: (1) "Detail of Advance A/C WAVS" in the amount of $1,596.12; and (2) "9/78 - Peter Fulton - services, WAVS, $1,000." Gore explained, however, that it was his practice to presell a market with respect to religious programs[53] and to advance the money for such projects from his other corporations. He further explained that the ledger references to WAVS relate to the assignee's portion of the assignment application or to other expenses incurred by Gore in the acquisition of WAVS.[54] In addition, broadcast consultant Peter Fulton was paid for some work which he did for Gore in connection with an outstanding construction permit to move WAVS' transmitter site.[55] Ginsburg paid Fulton for the separate work which he did on behalf of WAVS at a rate which Fulton negotiated with Ginsburg.[56]

18. *Conclusion.* The evidence indicates that the licensee decided to change the station's format and that the licensee, rather than Gore, was the principal beneficiary of the immediate change. It is undisputed that once Ginsburg decided to adopt a religious format, he turned to Gore for

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[51] Affidavit of Ramon A. Hoopper, dated April 18, 1980.

[52] To the extent that Hooper's written statement to Gore appears to contradict information submitted on discovery, an evidentiary hearing is not invariably required to resolve such a conflict. *See Broadcast Enterprises, Inc.* v. *FCC*, 390 F.2d 483, 485 (D.C. Cir. 1968); *Fine Arts Broadcasting, Inc.*, 57 FCC 2d 108, 111 (1975); *Radio Augusta, Inc.*, 16 FCC 2d 604, 608 (1969).

[53] Response of Gore Broadcasting of South Florida, Inc. to Broadcast Bureau's Interrogatories, No. 2(a), p. 7; and No. 4(d), pp. 12–13.

[54] These included legal expenses, expenses connected with the assignment application, and with other regulatory matters. *Id.* at Nos. 5–6, pp. 13–16. Affidavit of Harold Gore, dated October 21, 1981.

[55] Fulton spent considerable time and effort in attempting to obtain the necessary permission from various federal and local authorities for the move. Because of the pending assignment, Ginsburg was unwilling to spend the necessary funds to effectuate the move. By employing Fulton in this matter prior to the actual acquisition of the station, Gore hoped to be able to move to the new site as soon as the Commission approved the assignment. Response of Gore Broadcasting of South Florida, Inc. to Broadcast Bureau's Interrogatories, No. 6, pp. 14–15; and No. 2(a), p. 6.

[56] Gore, however, paid all of Fulton's travel expenses to Fort Launderdale. Response of Gore Broadcasting of South Florida, Inc. to Broadcast Bureau's Interrogatories, No. 2(a), pp. 8–9.

assistance. Thus, at Ginsburg's request, Gore and Banther advised Ginsburg on personnel and programming matters relating to the change. We have advised our licensees not to allow prospective purchasers to become involved in such matters, so as to avoid a premature transfer of control.[57] However, we are persuaded that none of the principal indices of premature assumption of control are present in this case.[58] Having examined the record, we find insufficient indication that Gore assumed managerial responsibility for either the hiring and firing of employees or the station's programming policy to warrant further evidentiary proceedings with respect to these matters. In this regard, Gore's admitted involvement in the format change and in the employment of three idnividuals does not represent sufficient participation in the affairs of the station on a day-to-day basis in the light of all of the circumstances to leave an unresolved question of fact as to an unauthorized transfer of control. Although the immediate format change did not benefit Gore, his involvement in the station's affairs, as well as Banther's brief supervision of Hooper, was confined to personnel and programming matters directly related to the format change. Moreover, we are persuaded by Ginsburg's refusal to follow all of Gore's recommendations in the areas of personnel and programming changes blindly, as well as by the clear evidence that he ultimately exercised responsibility for all such decisions, that Gore's limited involvement in these areas was purely advisory. Finally, there is no evidence that Gore ever assumed control over the station finances. Thus, we believe the record, taken as a whole, does not leave any substantial and material question of fact suggesting that Gore ever assumed *de facto* control over any aspect of the station's operation.

## *MISREPRESENTATION*

19. Ginsburg represented in an affidavit, dated December 15, 1978 and submitted in response to Celebrities' Petition to Deny, that "Harold Gore, a five percent (5%) stockholder, suggested that a religious format might be more profitable." However, there was some indication that the decision to change the station's format was made before Gore acquired Bresky's fifteen shares. We have examined the information obtained through discovery and are persuaded that there is no substantial or material question of fact as to whether either Gore or the licensee misrepresented material facts concerning this transaction.

20. Initially, there was some confusion as to when the stock was actually transferred to Gore and whether the $16,000 was ever paid.

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[57] *Phoenix Broadcasting Co.*, 44 FCC 2d 838, 839 (1973).

[58] Assumption of a managerial position at the station which a prospective purchaser seeks to acquire, such as one involving responsibility for the hiring and firing of personnel or for formulating the station's programming and operating policies, indicates a premature assumption of control. *Phoenix Broadcasting Co.*, 44 FCC 2d 838 (1973).

Evidently the agreement that Gore would acquire Bresky's fifteen shares was reached on or about August 8, 1978, at the same time that the contract for the sale of the station was finalized.[59] Although the parties expected that the formal agreement for the acquisition of the 5% interest would be drawn up immediately and considered Gore to be a stockholder in WAVS from the date of the agreement, the agreement was not executed until September 11, 1978, and the stock was not actually transferred on the corporate books of Radio WAVS Inc. until that date or a few days thereafter.[60] Much of the confusion as to the date of the transaction appears to have resulted from this delay. The confusion was further compounded by errors in the corporate minutes of Radio WAVS, Inc.[61] Moreover, the licensee has conceded that Bresky sold Gore the fifteen shares so that Gore, who received no other compensation for his services as a consultant, could take a more active role in the station's format change without violating our rules.[62] Thus, the actual date of the sale is not material, and we can discern no motive for the parties to have concealed this information from the Commission. Since the licensee has also admitted that Gore suggested the format change and that it sought to involve Gore in implementing the change by offering him an immediate 5% interest in WAVS, whether Gore suggested the format change in his capacity as a stockholder is likewise irrelevant. Finally, it is undisputed that Gore became a stockholder in WAVS before December 15, 1978. Thus, Ginsburg's statement on that date that the format change was suggested by "Harold Gore, a 5% stockholder" was technically correct, regardless of whether Gore was actually a stockholder at the time the decision to change the station's format was made.

21. The discrepancy concerning the payment of the $16,000 is more troublesome. Although Gore received an immediate ownership interest in the station as consideration for his services, he gave Bresky a collateral note for $16,000 on September 11, 1978 in exchange for the stock. The Bill of Particulars alleges, and the parties apparently do not dispute, that this money, which represents approximately 5% of the net purchase price,[63]

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[59] Radio WAVS, Inc.'s Response to Broadcast Bureau's Interrogatories, No. 7, pp. 21–22; Gore Broadcasting of South Florida, Inc.'s Response to Broadcast Bureau's Request for Admissions, No. 10; and Affidavit of Harold Gore, dated October 21, 1981.

[60] Radio WAVS, Inc.'s Response to Broadcast Bureau's Interrogatories, No. 7, p. 22.

[61] Radio WAVS, Inc.'s Reponse to Broadcast Bureau's Interrogatories, No. 8(b); Response of Radio WAVS, Inc. to Broadcast Bureau's Request for Admissions, Nos. 6 and 9; Gore Broadcasting of South Florida, Inc.'s Response to Broadcast Bureau's Request for Admissions, No. 21; Affidavit of Maxine Feller, dated October 20, 1981.

[62] Apparently, Ginsburg and Bresky sought to entice Gore into assuming a more active role in the format change with a 5% interest in the station, and to obtain his services as a consultant at no out-of-pocket cost to themselves. WAVS, Inc.'s Response to Broadcast Bureau's Interrogatories, No. 7, pp. 20–22.

[63] The total purchase price was $500,000, but the buyer agreed to assume up to $182,000 in liabilities. Five percent of the difference ($318,000) is $15,900.

was to have been paid out of the proceeds of the sale at closing.[64] There is no evidence that the money was ever paid, and the note was ultimately cancelled in exchange for the return of the stock.[65] However, the October 16, 1978 Ownership Report for Station WAVS, signed by Jordan Ginsburg, failed to disclose, as required by FCC Form 323,[66] that Bresky had received a note for $16,000, rather than cash, for the stock. In view of the licensee's statement in a subsequent letter that the money had been promised but never paid, it is conceivable that the licensee inadvertently neglected to distinguish between the execution of a note and full payment in cash. However, there is no evidence in the record to support such a conclusion or otherwise explain the facts and circumstances surrounding this omission. Nevertheless, we do not believe that this single error raises a substantial and material question of fact as to the licensee's basic qualifications which must be resolved by further evidentiary proceedings.[67] In this regard, we can discern no motive for the apparent omission. The note which Gore gave Bresky was for $16,000, and there is no indication that the full amount would not have been forthcoming as promised at closing. Absent such evidence, there is no basis for believing that the entire transaction was a subterfuge for an unauthorized transfer of control[68] and that, therefore, the licensee's statement in the Ownership Report that the $16,000 had been paid in full was a deliberate misrepresentation. Under these circumstances, where there is no significant evidence that the licensee intended to deceive the Commission, we do not believe that the licensee's failure to disclose that Bresky received a collateral note rather than cash for the stock raises a question of deliberate misrepresentation necessitating further evidentiary inquiry.[69]

22. As noted above, Gore has successfully explained the references to WAVS in the Ledger books of WINQ and Gore Broadcasting. Thus, there is no factual support for the charge that Gore was finacially involved in the affairs of WAVS. Accordingly, Gore's statement to Commission investiga-

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[64] Paragraph 7 of the Bill of Particulars.

[65] By Memorandum Opinion and Order, FCC 82M–0367, released February 4, 1982, the Administrative Law Judge permitted Radio WAVS, Inc. to amend its application to reflect Bresky's reacquisition of the interest previously sold to Gore. The October 30, 1981 letter submitted with the amendment indicates that the September 11, 1978 note will be returned and marked "Paid in Full" when the stock is delivered. The fact that no money changed hands at this time, in addit to the return of the note, would appear to indicate that Gore had paid nothing on the note.

[66] The form requires disclosure of the total consideration paid and requires that any consideration other than cash be fully described. Ginsburg simply listed the $16,000 as "total consideration paid."

[67] *Chief Washakie TV*, 46 RR 2d 1594, 1597 (1980); *Kaye-Smith Enterprises*, 71 FCC 2d 1402, 1415 (1979).

[68] To the extent that the stock could be considered as compensation for Gore's services as a consultant to the station, its receipt actually corroborates the conclusion that Gore's participation in the format change did not constitute an unlawful transfer of control.

[69] *See Washington Association for Television and Children (WATCH)* v. *FCC*, 665 F.2d 1264, 50 RR 2d 161, 165–67 (D.C. Cir. 1981); *Stone* v. *FCC*, 466 F.2d 316 (D.C. Cir. 1972).

tors that he exercised no control over the station's finances raises no question of misrepresentation.

23. In view of the foregoing, we find that there is no unresolved substantial or material question of fact as to the basic qualifications of either Gore Broadcasting of South Florida, Inc. or Radio WAVS, Inc., and that there is no basis for imposing a forfeiture against the licensee. With one minor exception, the material submitted on discovery adequately explains the discrepancies which initially led us to specify a misrepresentation issue in this proceeding. The substantial evidence developed on discovery also persuades us that the licensee maintained ultimate control over every significant aspect of the station's operation during the pendency of the assignment application. Thus, there is no need for further evidentiary proceedings on these issues. Since we perceive no need for further evidentiary inquiry, there is no reason to withhold action on the renewal application or to require that the ALJ prepare and issue a separate decision in this proceeding. Thus, we find that the immediate grant of the renewal application for Station WAVS will serve the public interest.

24. ACCORDINGLY, IT IS ORDERED, That the Request for Expedited Consideration, filed August 13, 1982, by Radio WAVS, Inc. IS GRANTED to the extent reflected herein; that the application of Radio WAVS, Inc. for renewal of its license for Station WAVS, Fort Lauderdale, Florida (File Nos. BR-4841 and BR-781003UB) IS GRANTED; and that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

William J. Tricarico *Secretary*

Comsat, Authorization Conditions on
Satellite Communications,
Developmental Authorization
Satellite Direct Broadcast

Application for first phase of direct broadcast satellite system is granted subject to certain conditions. Motion for stay denied. —*Satellite TV Corp.*

FCC 82–572

**BEFORE THE**

# FEDERAL COMMUNICATIONS COMMISSION

**WASHINGTON, D.C. 20554**

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| In the Matter of | |
| In re Application of Satellite Television Corporation for Authority to Construct an Experimental Direct Broadcast Satellite System. | File No. DBS–81–01 |

MEMORANDUM OPINION AND ORDER

Adopted: December 20, 1982; Released: December 22, 1982

BY THE COMMISSION:

*Introduction*

1. This *Order* denies a Motion for Stay of the Commission's action on November 4, 1982, granting Satellite Television Corporation ("STC") a conditional construction permit in the Direct Broadcast Satellite service. *Application of Satellite Television Corporation*, FCC 82–427, 91 F.C.C. 2d 927, released October 13, 1982 ("*STC Grant*"). The motion was filed on October 8, 1982, by the National Association of Broadcasters ("NAB"). It requested that the subject grant be stayed pending completion of judicial

review of the *STC Grant*. NAB subsequently filed an appeal of the *STC Grant* with the U.S. Court of Appeals for the District of Columbia Circuit.[1] An Opposition to the motion was filed by STC on October 15, 1982.

*Discussion*

2. The Commission follows judicial principles when considering a request for stay. In *Virginia Petroleum Jobbers Association v. Federal Power Commission*, 259 F. 2d 921, 925 (D.C. Cir. 1958), the Court listed four criteria for granting a stay request:

(1) Has the petitioner made a strong showing that it is likely to prevail on the merits of its appeal?
(2) Has the petitioner shown that without such relief, it will be irreparably injured?
(3) Would the issuance of the stay substantially harm other parties interested in the proceeding?
(4) Would the stay further the public interest?

In *Washington Metropolitan Area Transit Commission v. Holiday Tours*, 559 F. 2d 841 (D.C. Cir. 1977), the Court clarified that standard saying that:

> [U]nder *Virginia Petroleum Jobbers*, a court, when confronted with a case in which the other three factors strongly favor interim relief, may exercise its discretion to grant a stay if the movant has made a substantial case on the merits. The court is not required to find that ultimate success by the movant is a mathematical probability. . . . The necessary "level" or "degree" of possibility of success will vary according to the court's assessment of the other factors.

*Id.*, at 843. These factors are considered in order below.

3. *Likelihood of Prevailing on the Merits of the Appeal.* The NAB maintains that the proper standard here requires only that the petitioner demonstrate that a "serious legal question" has been presented. In that regard, it notes that the grant of a construction permit to STC in the DBS service involves several significant questions that have not been reviewed yet by an appellate court. NAB maintains that these are questions of first impression, involve matters of statutory construction and legislative intent, and are of both substantive and procedural importance. In its opposition, STC maintains that the proper standard requires that the petitioner demonstrate a strong showing of its likehood of prevailing on the merits, and that the NAB failed both to recognize and to meet that

[1] *National Association of Broadcasters v. F.C.C.*, U.S. Court of Appeals for the District of Columbia Circuit, Case #82–1926 (filed October 14, 1982).

standard. In posing the question on this issue, the *Petroleum Jobbers* standard indicates that a "strong showing" of likelihood of prevailing on the merits is required. "Without such a substantial indication of probable success, there would be no justification for the court's intrusion into the ordinary processes of administration and judicial review." *Petroleum Jobbers, supra,* at 925. However, according to *Holiday Tours,* the probability of success requried under *Petroleum Jobbers* "will vary according to the court's assessment of the other factors." *Holiday Tours, supra,* at 843. In the situation here we will assume, *arguendo,* that the standard is as stated by NAB and we will further assume, *arguendo,* that NAB has satisfied this standard. Our decision to grant a stay will be based, therefore, on our consideration of the petitioner's showing under the other relevant factors. We wish to reiterate, however, that we do not accept NAB's arguments as constituting valid objections to the grant of STC's application.

4. *Irreparable Injury to Petitioner.* Petitioner makes no argument or factual assertion that any specific harm will befall it if the stay is not granted. Instead, NAB's assertion of "irreparable detriment" rests on the assumption that grant of the permit will "unavoidably prejudice the court's consideration of the issues" in NAB's appeal of the *STC Grant.* In this regard, NAB notes correctly that one condition of the *STC Grant* is that the permittee proceed with "due diligence" in the construction of its proposed satellite system. NAB contends that "[t]his places the reviewing tribunal in the extraordinarily difficult position of causing STC the loss of this huge investment if the issues are resolved against it." Although NAB recognizes that expenditures by STC are irrelevant in the court review, it asserts that the possible financial consequence of an adverse finding to STC on appeal "has the clear potential to influence the decision on the merits." STC answers that the arguments of NAB are without merit for two reasons. First, since most new telecommunications ventures require large investments, the recognition of this as an independent basis for granting a stay would automatically delay the introduction of most new services. Second, the Commission and the courts have demonstrated their ability to reach conclusions despite significant financial consequences. STC cites *RKO General, Inc. v. FCC,* 670 F. 2d 215 (D.C. Cir. 1981), in support of its position.

5. Our review of these matters fails to persuade us that, absent grant of the relief requested, petitioner will suffer irreparable harm. The harm alleged is potential prejudice to petitioner's appeal of the *STC Grant.* This assertion, in turn, is premised upon speculation that the reviewing court would consider the financial consequences to STC when making its determination on the merits of that appeal. However, these financial considerations clearly are not relevant to the merits of the court appeal of the *STC Grant* and therefore would not be considered by the reviewing court.

6. *Irreparable Harm to Interested Parties.* Petitioner asserts that grant of the stay will not cause irreparable harm to STC or other interested parties. NAB notes that STC has no vested right to a construction permit at any specific time, and that if the grant of the permit is affirmed on appeal, STC may proceed with construction. STC makes no claim of a vested legal right to the continued effectiveness of the construction permit, but does list several sources of harm that would result from the stay. These include increased costs associated with construction and implemention of the system, lost opportunity for operation of the system, and lost competitive advantage. Our review here requires consideration of possible financial harm to STC. Although irrelevant for purposes of consideration of the merits of the appeal, harm to the parties goes to the very heart of the determination of whether to grant a requested stay. Here, STC lists significant and tangible damage that would likely result from the stay.

7. *The Public Interest.* NAB contends that a stay will not harm the public interest. In its view, the primary and dispositive public interest matter here is "maintaining the impartiality and integrity of the judicial process." Implicitly relying on the earlier stated rationale that the reviewing court wuld not act properly absent a stay, NAB thus maintains that the public interest clearly warrants the issuance of a stay. In reply, STC relies on the Commission's position throughout this proceeding that prompt implementation of the DBS service would provide important public interest benefits. Our review of the public interest considerations at risk in acting on this stay request clearly suggests denial.

8. The focal point for this decision must rest on a determination as to whether it is in the public interest for STC to proceed now as authorized in the *STC Grant* and thus be in a position to provide DBS service to the public sooner rather than later. Throughout the DBS rule making and application processing proceedings, the Commission has consistently avoided all unnecessary delay and sought to act expeditiously in order to further the goal of offering increased and enhanced communications services to the American public.[2] We again reiterate our belief that the public interest would be disserved by unnecessary delay in the delivery of DBS services, and thus, a grant of the stay must bve viewed as contrary to the public interest.[3]

9. *Balance of the Equities.* According to the *Holiday Tours* case, resolution of the stay request requires "an anlaysis under which a showing of the merits is governed by the balance of the equities as revealed

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[2] *See Report and Order,* 90 F.C.C. 2d 676, 680–683 (1982); *STC Grant,* at paragraphs 36–40, 104.

[3] Petitoner attempts to show that a stay is required to prevent harm to the public that would occur if the court's impartial review of this case were impaired as a result of STC going forward with construction. We regard the suggestion that the court would be unable to review NAB's arguments in an impartial manner as wholly without foundation.

through an examination of the other three factors." *Holiday Tours*, at 844. Further, "[a]n order maintaining the status quo is appropriate when a serious legal question is presented, when little if any harm will befall other interested persons or the public and when denial of the order would inflict irreparable injury on the movant." *Id.* Applying this standard, we find no basis to justify granting the requested stay. As distinct from the *Holiday Tours* situation where petitioners demonstrated a grave potential for immediate, irreparable injury to petitioners absent the stay, petitioner here fails to allege any personal harm and bases its allegation of harm on the possibility that the expenditure of funds by STC on the basis of the conditional grant would influence the reviewing court. On the other hand, the Commission finds a continuing public interest in the development and implementation of the DBS service, and notes that STC has made a showing of the probability of definite and significant harm if the stay request were granted. Thus, we believe the public interest is best served by not granting the requested stay.

10. Accordingly, IT IS ORDERED, That petitioner's "Motion for Stay" IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

William J. Tricario
*Secretary*

CATV Carriage
CATV Carriage, Sports Programming
CATV Program Exclusivity
Declaratory Ruling, Request for
Rule Making, Petition for, Denied

Petition for rulemaking and, in part, request for declaratory ruling, both seeking further requirements of substantiation of carriage, nonduplication, and sports blackout requests denied.
—*Service Electric Cable TV, Inc.*

FCC 82–553

**BEFORE THE**

# FEDERAL COMMUNICATIONS COMMISSION

**WASHINGTON, D.C. 20554**

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| In re: | |
| Amendments to Part 76 of the Commission's Rules to Require Substantiation of Requests for Carriage or Nonduplication to Cable Television Systems | RM–4098 |
| Request for a Declaratory Ruling by Service Electric Cable TV, Inc. and Service Electric Cable T.V. of New Jersey, Inc. | |

MEMORANDUM OPINION AND ORDER

Adopted: December 8, 1982; Released: December 16, 1982

BY THE COMMISSION:

*Introduction*

1. On March 2, 1982, Service Electric Cable TV, Inc. (hereinafter "Service Electric"), a multiple cable television system operator serving over 155 communities in Pennsylvania and New Jersey, filed the above-captioned "Petition for Rulemaking" seeking ". . . to amend Part 76 of the Commission's Rules and Regulations to require television broadcast sta-

tions requesting carriage on a cable television system or non-duplication of network programming or sports broadcasts to substantiate the requests with documentation of the basis for the request." Public notice of the petition's filing was given on April 22, 1982 (Report No. 1349). Service Electric's petition is opposed by the following parties: American Broadcasting Companies, Inc. (hereinafter "ABC"); the National Basketball Association, the National Hockey League, the North American Soccer League, and the Major Indoor Soccer League (hereinafter "the Leagues"); several licensees of television broadcast stations filing jointly as "Licensees";[1] and Major League Baseball (hereinafter "Baseball"), an association of professional baseball clubs. Service Electric has replied. In addition, on March 31, 1982, Service Electric and Service Electric Cable T.V. of New Jersey, Inc. (hereinafter also referred to as "Service Electric") jointly requested issuance of a declaratory ruling that the request made of Service Electric by the Philadelphia Phillies professional baseball club (hereinafter "the Phillies") that certain distant signal baseball telecasts be deleted by Service Electric during 1982 was insufficient to trigger Service Electric's obligations to afford such protection, pursuant to Section 76.67 of the Commission's Rules. Service Electric's request is opposed jointly by the Phillies and Baseball, and Service Electric has replied. Additionally, both Baseball and the Phillies request expedited action in this matter, and are joined in this request by Service Electric.

## *Summary of Pleadings*

### *Petition for Rulemaking*

2. In support of its petition, Service Electric argues that in many cases it receives form letters from television stations requesting carriage even though carriage is not required by the Commission's rules. In every case, it must expend time and money to obtain signal contour maps, to determine the station's 35-mile zone, or to review tables of significantly viewed signals, which Service Electric maintains is an unfair burden. Rather,

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[1] These are the licensees of the following entities: Stations WSAW–TV (CBS, Channel 7, Wausau, Wisconsin; WTRF–TV (CBS, Channel 7), Wheeling, West Virginia; KCAU–TV (ABC, Channel 9), Sioux City, Iowa; KOSA–TV (CBS, Channel 7), Odessa Texas; WMTV (NBC, Channel 15), Madison, Wisconsin; KRAU–TV (ABC, Channel 19), Peoria, Illinois; WAKR–TV (ABC, Channel 23), Akron, Ohio; WAFB–TV (CBS, Channel 9), Baton Rouge, Louisiana; KGUN–TV (ABC, Channel 9), Tucson, Arizona; KMTV (NBC, Channel 3), Omaha, Nebraska; WCTV (CBS, Channel 6), Tallahassee, Florida—Thomasville, Georgia; WTVQ–TV (ABC, Channel 62), Lexington, Kentucky; KITV (ABC, Channel 4), Honolulu, Hawaii; KMAU (ABC, Channel 12), Wailuku, Hawaii; KHVO (ABC, Channel 13), Hilo, Hawaii; KFTV (Ind., Channel 21), Hanford-Fresno, California; KDTV (Ind., Channel 14), San Francisco, California; KMEX–TV (Ind., Channel 34), Los Angeles, California; KWEX–TV (Ind., Channel 41), San Antonio, Texas; WLTV (Ind., Channel 23), Miami, Florida; WXTV (Ind., Channel 41), Paterson, New Jersey; KTSB (NBC, Channel 27), Topeka, Kansas; KICU–TV (Ind., Channel 36), San Jose, California; WWTV (CBS, Channel 9), Cadillac, Michigan; WWUP–TV (CBS, Channel 10), Sault Ste. Marie, Michigan; and WKRG–TV (CBS, Channel 5), Mobile, Alabama.

contends Service Electric, the Commission should require that the television station submit such documentation in support of its request, whether the request is for carriage, nonduplication protection, or blackouts of sports telecasts, since this information actually is in the possession of the television station. According to Service Electric, this would not substantially burden the requesting station, whose work should not be done by cable operators.

3. In its opposition, filed May 24, 1982, ABC argues that the Commission's carriage and nonduplication rules have been applied to cable systems since 1965, and states that it doubts that the burden perceived by Service Electric, has it in fact existed, would have been borne this long in silence. In order to determine the validity of a carriage, nonduplication, or blackout request, contends ABC, all a cable operator needs is a map of a given station's Grade B contour, 35-mile or 55-mile zone, and its significantly viewed status. All of this information is readily available, ABC asserts, in sources it cites: the *Television Factbook;* the *Cable and Station Coverage Atlas;* and the *Reconsideration of the Cable Television Report and Order,* FCC 72–530, 36 FCC 2d 326, 378–463 app. B (1972). ABC suggests that even given the documentation sought by Service Electric, cable operators would verify its accuracy themselves, and might well use some minor omission as the basis for noncompliance.

4. The Leagues, in their opposition filed May 24, 1982, contend that the sports blackout rule works efficiently as currently drafted, affecting "[o]nly a small percentage of the cable systems in the United States . . .," and that it only requires the deletion of a few games in a given season. Moreover, the League asserts, cable systems are in a better position to determine the applicability of the sports blackout rule (Section 76.67 of the Commission's Rules), given the systems' daily familiarity with the delimiting factors, than are the Leagues. According to the Leagues, cable operators possess the very information (such as franchise boundary maps) which the Leagues would have to obtain to document their requests, pursuant to Service Electric's proposal. The League contend that they make diligent efforts to target their requests accurately under the current rules, and argue that "Service Electric's proposal is totally without merit."

5. Licensees, in their opposition filed May 24, 1982, echo ABC's argument concerning the ready availability to cable operators of the data deemed necessary by Service Electric. Licensees, too, suggest that cable operators would verify such documentation independently, and might base noncompliance on minor omissions.

6. Baseball opposed Service Electric's petition on May 24, 1982. Baseball references and incorporates its opposition to Service Electric's request for a declaratory ruling (*see* paragraphs 9–10, *infra*), and argues that Service Electric's petition erroneously presupposes that the sports

blackout rule presently requires that notifications individually identify each affected community unit. Baseball contends that Service Electric's proposal ". . . would be a superfluous burden," noting that cable operators are well aware of their systems' locations. In addition, Baseball argues that the documentation required by Service Electric's proposal would provide the basis for further challenges to the protection provided by Section 76.67 of the Rules. Baseball maintains that it has always cooperated in good faith with cable systems, and notes that Service Electric cites no evidence of industry dissatisfaction with the manner in which notification questions have been resolved to date. Citing the *Memorandum Opinion and Order in Docket No. 19417 and RM–1836*, FCC 75–1235, 56 FCC 2d 561, 567 (1975), Baseball argues that Service Electric's proposal erroneously assumes that individual broadcasters send sports blackout notices, rather than the sports interests, and that the question of who sends the notices need not be raised at all. Baseball contends that Service Electric has not demonstrated any need for its proposed rule changes, and urges the Commission to deny the petition.

7. Service Electric contends in reply that it is precisely because the documentation Baseball does not wish to submit ". . . is not presently required that the petition for rulemaking was filed."[2] In addition, Service Electric argues that cable systems are heavily burdened currently by the need to verify carriage, nonduplication, and blackout requests, which burden, according to Service Electric, should not be on the cable system, as Licensees apparently desire. Service Electric describes the Leagues' approach to documenting their requests as cavalier, further underscoring the need for Service Electric's proposed rulemaking.

*Request for Declaratory Ruling*

8. In support of its request, Service Electric argues that the Phillies' request for protection identifies merely cable system companies and not the specific community units affected by their request. Such notification, contends Service Electric, is insufficient and unfair, because it requires Service Electric to identify the affected community units at its own peril. Service Electric notes that it operates over 160 community units in eastern Pennsylvania and New Jersey, which distringuishes its case from that in *TeleCable of Overland Park, et al.*, Mimeo No. 001660, (1981), and could be open to significant liability under both the Copyright Revision Act of 1976 and the Communications Act of 1934, as amended, were it to fail properly to identify all affected community units. Until the Phillies specifically identify the community units on which they seek protection, Service Electric states that it cannot comply with the Phillies' request.

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[2] This reply was filed on June 15, 1982, following a request for extension of time, which the Chief of the Cable Television Bureau approved. *Order in RM–4098*, Mimeo No. 4513 (adopted June 6, 1982).

9. In their opposition, filed April 22, 1982, Baseball and the Phillies argue that the obligation imposed by Section 76.67 of the Rules is minimal, requiring Philadelphia area cable systems, for example, to delete only fourteen (less than four percent) of the approximately 370 baseball telecasts presented on the three satellite-delivered "superstations."[3] Baseball argues that to obtain such protection, it undertakes a process of notification that is ". . . costly, complex, and time consuming. . . .," identifying all affected cable systems, generating a master list which is regularly updated, and identifying every game that is subject to protection of the approximately 1,500 telecasts each season. Baseball thereupon prepares and distributes both initial and supplemental notices ". . . to those cable systems which Baseball believes operate in at least one community within the specified zone of the club concerned," (footnote omitted), mailing such notices to the operator's mailing address on file with the Commission. Baseball argues that noncompliance with Section 76.67 of the Rules is widespread, referencing its pleadings in *Major League Baseball and the San Francisco Baseball Club*, Mimeo No. 002815, 50 RR 2d 39 (1981), and notes that the Phillies have requested protection from Service Electric against distant sports telecasts since 1979. Nevertheless, states Baseball, Service Electric now asserts for the first time ". . . that it has no idea which of its own community units are within 35 miles of Philadelphia."

10. Baseball and the Phillies characterize Service Electric's request as in reality a petition for rulemaking, and contend that Section 76.67 of the Rules does not require that requests for protection specify the individual community units affected, nor was this mandated by the Commission in adopting the rule, citing the *Report and Order in Docket No. 19417 and RM–1836*, FCC 75–819, 54 FCC 2d 265 (1975), *recon. denied in pertinent part*, FCC 75–1235, 56 FCC 2d 561 (1975). Moreover, opponents note, a similar notice has been found by the Commission to comply with the rule, citing *Major League Baseball*, 50 RR 2d at 42. Opponents argue that the 35-mile specified zone is a readily ascertainable standard, widely recognized and utilized by the cable industry, citing *Docket No. 19417*, 54 FCC 2d at 282. Baseball and the Phillies assert that only in a limited number of cases would uncertainty exist concerning the location of a borderline community unit, whose precise location would best be determined not by Baseball but by the relevant cable operator. Requiring Baseball to specify community units in its notices, petitioners claim, would impose a pointless burden, for this is information which the affected systems already possess or which they can readily ascertain. Imposing such a burden on Baseball would jeopardize its legitimate protection in any unidentified

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[3] These are: Stations WOR–TV (Ind., Channel 9), New York, New York; WGN–TV (Ind., Channel 9), Chicago, Illinois; and WTBS (Ind., Channel 17), Atlanta, Georgia.

community, and would require Baseball to conduct further exhaustive searches of Commission records, which are not necessarily updated immediately. "Baseball would be penalized for failing to identify community units operated by cable systems that received Sports Rule notices and knew full well which of their units were affected." Opponents note that the Commission has repeatedly stressed the need for good faith and cooperation between cable operators and sports interests with regard to the rule, citing *TeleCable of Overland Park, et al., supra,* and *Carthage Cablevision, Inc.* (Carthage, Missouri), FCC 77–247, 64 FCC 2d 545, 547 (1977), and claim that Service Electric's actions—in contrast to opponents' own—demonstrate neither cooperation nor good faith.

11. In its reply, filed April 29, 1982, Service Electric contends that Baseball could have as easily generated a list of the relevant community units as it did all the other information it cites. Service Electric argues that it is the sufficiency of the Phillies' notice which is at issue herein, and not Baseball's other notices and information. Service Electric maintains that the Phillies have not sent notices to the requisite community units, whose identity is readily ascertainable, and therefore the Phillies have not literally compiled with Section 76.67 of the Rules. Service Electric contends that "[t]he entire rule is couched in terms of community units and not . . . systems," as is the entire regulatory framework of mandatory signal carriage and nonduplication rights. According to Service Electric if, as the Phillies claim, there is no uncertainty regarding the location of affected community units, save for a few instances, fairness requires that the Phillies should identify the community units in their request. This is underscored, argues Service Electric, by the Phillies' threat of large damages for noncompliance. Service Electric asserts that it has acted in good faith, as it stated that it would comply with Section 76.67 of the Rules, once the Phillies identify the relevant community units.

*Discussion*

12. The pleadings filed in both Service Electric's rulemaking petition and declaratory ruling petition address similar and interrelated issues. Accordingly, we are consolidating these proceedings. *Telecable Associates, Inc., et al.,* Mimeo No. 2885, 51 RR 2d 147 (1982); *Big Valley Cablevision, Inc.* (Stockton, California), FCC 81–153, 85 FCC 2d 973 (1981). To the extent that clarification of Section 76.67 of the Rules is needed, we turn first to Service Electric's request for a declaratory ruling, prior to addressing the question of the need for a rulemaking directed toward this and similar rules.

13. Pursuant to Section 76.67 of the Commission's rules, cable television systems may be required to delete carriage of certain distant television broadcast signals during the time they are carrying sports programming. The deletion of programming under this rule is not automatic, however,

but is triggered by the holder of the broadcast rights to the event requesting that the event be deleted. The rules apply separately to each cable television system "community unit"—a term specifically defined in the rules to identify political subdivisions or communities in which cable systems operate—and the requirements of the deletion notice are set forth in some detail.

14. The event precipitating the declaratory ruling petition now before us was the receipt by Service Electric of an unsigned letter mailed to Service Electric and forty-seven other addresses requesting "the full scope of protection" afforded by Section 76.67 for certain specified Phillies baseball telecasts. No specific cable television system or cable television system communities are named in the letter although the mailing addresses are sometimes, but not always, suggestive of the location where protection is being sought. Service Electric urges that the notice be found defective because it does not identify in which of the 160 communities served by Service Electric program deletions are to be required. It is readily apparent that many of these 160 systems are outside the zone where the rules require that protection be provided. In fact, the only community associated with the notification here in question is Mahanoy City, which is the address to which the notification was sent, and is well outside the zone where deletions are required.

15. The Commission has on a number of occasions stressed that it expects a high degree of cooperation and good faith between cable television system operators and parties seeking to exercise rights under the program deletion rules. We think this, at a minimum, requires that deletion notices identify the cable systems on which protection is to be provided. Cable system operators are subject under the Commission's rules to both forfeitures and to copyright penalties under the Copyright Law. It is therefore important that the protection sought be identified as specifically as is reasonably possible. Ambiguities in the terms of the notice increase the number and complexity of the decisions the system operator must make in order to comply and provide a ready area for dispute when the Commission attempts to enforce the rules. This requirement does not appear to impose any significant additional burden on the party requesting the protection. Indeed, the responsive pleadings of Baseball and the Phillies in this proceeding note that the Commission adopted the 35 mile zone of protection specified in this rule in part because it provided a "convenient and readily ascertainable standard." *Docket No. 19417*, 54 FCC 2d at 282, and that Baseball, in fact, sends notices only to cable systems identified as being within the relevant specified zone. To include the identity of each system from which protection is expected on the notice would not seem unduly burdensome. Specific community units can, we believe, be adequately identified for purposes of the notice requirement by reference to the principal community within which the

system is identified (*i.e.*, protection is sought on a given system's headend, including the community units served from that headend).

16. The petition for rulemaking filed by Service Electric pertains to the same general matter but is broader in scope. The essence of the concern expressed here appears to be that cable systems are receiving requests for network nonduplication protection, sports blackout protection, and mandatory carriage from parties that have no such rights on the systems in question and which the systems are then put to some expense to determine their validity. The solution to this problem, which Service Electric suggests, is to have certain documentation included with each such request so that its validity may more readily be ascertained. Although the specific forms of documentation sought are not set forth in detail, it would include such documents as a map of a station's Grade B contour. From many years experience with these rules, we are familiar with the kinds of situations which may be of most concern to Service Electric. In some areas of the country, including the areas in Pennsylvania served by Service Electric, the rules are somewhat complex, involving Grade B contours, 35 and 55 mile zones, and charts of significantly viewed signals from a number of relatively close and overlapping market areas. In some situations, it appears that stations seeking to enforce rights under the cable television rules have, rather than identify those rights with specificity, simply sent the relevant notices to all conceivably covered cable television systems, leaving it to the cable systems to determine what specifically is required. This is not an appropriate notice procedure and, as we have suggested in the past, demonstrated patterns of abuse in terms of the notification process could result in the Commission's suspension of the rights in question for the station involved. *See First Report and Order in Docket Nos. 19995 and 18785*, FCC 75–413, 52 FCC 2d 519, 555 (1975). We believe, however, that problems in this area occur only infrequently and are not sufficiently troublesome to warrant the imposition of additional paperwork burdens. We note that in the past broadcasters have expressed concern about the difficulties in proving violations of these rules and have suggested additional logging and other requirements to be imposed on the cable system operators involved. We denied these requests, choosing instead to believe that good faith cooperation of the parties is the basic requirement for the successful application of these rules, rather than additional burdens which are necessary only in the unusual case. *Id.* We do believe, however, that stations sending notices to cable systems should stand ready to provide such additional information as they have, including, in particular, service contour maps when questions arise as to the reasons for notices being sent to a particular system operator.

In view of the foregoing, we find that neither issuance of the declaratory ruling requested by Service Electric, except to the extent indicated

above, nor institution of the rulemaking proceeding proposed by Service Electric, is in the public interest.

Accordingly, IT IS ORDERED, That the "Petition for Rulemaking" (RM–4098) filed March 2, 1982, by Service Electric Cable TV, Inc. IS DENIED.

IT IS FURTHER ORDERED, That the petition for issuance of a declaratory ruling filed March 31, 1982, by Service Electric Cable TV, Inc. and Service Electric Cable T.V. of New Jersey, Inc. IS GRANTED to the extent indicated in paragraph 15, *supra*, and in all other respects IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

William J. Tricarico *Secretary*

CATV Cross Ownership by Network
Petition for Special Relief
Rules, Waiver of

Commission granted waiver of network/cable television cross-ownership rules for purposed new common director/partner. Requested relief will have a negligible impact upon the public interest considerations.
-*Whitcom Investment Company*

FCC 82–582

**BEFORE THE FEDERAL COMMUNICATIONS COMMISSION**

**WASHINGTON, D.C. 20554**

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| **In re:** | |
| **WHITCOM INVESTMENT COMPANY** | CSR–2191(X) |
| Petition for Special Relief | |

MEMORANDUM OPINION AND ORDER

Adopted: December 22, 1982; Released: January 6, 1983

BY THE COMMISSION:

*Introduction*

1. On September 13, 1982, Whitcom Investment Company (hereinafter "Whitcom") filed a "Petition for Special Relief" seeking a waiver of Section 76.501(a)(1) of the Commission's Rules to enable Mr. William S. Paley to become a partner in Whitcom.[1] Specifically, Whitcom requests that a ". . . waiver be granted to cover cognizable cable television holdings by Whitcom up to the lesser of one-half of one percent of the total cable

[1] Section 76.501(a) (1) of the Rules states:

(a) No cable television system (including all parties under common control) shall carry the signal of any television broadcast station if such system directly or indirectly owns, operates, controls, or has an interest in:

(1) A national television network (such as ABC, CBS, or NBC) . . .

subscribers in the United States or 90,000 subscribers . . . ." Whitcom's request is unopposed.

2. Mr. Paley is currently Chairman of CBS Inc. (hereinafter "CBS". Although Mr. Paley has announced his intention to resign from this position on April 20, 1983, Mr. Paley intends to remain a Director of CBS, to remain Chairman of the Executive Committee of the CBS Board, to become a consultant to CBS, and to retain ownership of 6.9% of the outstanding voting common stock of CBS. Whitcom is a private partnership, whose wholly-owned subsidiary, Whitney parent of State Cable TV Corporation (hereinafter "State"). State operates cable television systems serving a total of 24,307 subscribers in various communities in Maine and New Hampshire. Accordingly, absent the requested waiver, or a divestiture of his interests in CBS, Mr. Paley is barred from becoming a partner in Whitcom.

*Summary of Pleadings*

3. Whitcom argues in support of its petition that "The policies underlying the network/cable cross-ownership rule have been the subject of considerable recent criticism," citing the Notice of *Proposed Rulemaking in CT Docket No. 82–434*, FCC 82–323, *91* FCC 2d *76* (1982); *FCC Policy on Cable Ownership Staff Report* (November 1981); and *FCC Network Inquiry Staff Final Report* (October 1980). Whitcom notes that State currently offers its subscribers wide diversity in broadcast and nonbroadcast programming, including, cumulatively, forty-one signals not entitled to mandatory carriage, nineteen independent stations, fifteen educational stations, twenty-one ABC affiliates, sixteen CBS affiliates,[2] fourteen NBC affiliates, and eight cable programming networks.[3] Whitcom pledges to continue this diversity in programming, and ". . . plans to expand the channel capacity of various systems as technical and economic conditions permit. . . ." Mr. Paley's partnership interest in Whitcom, petitioner states, will be less than ten percent, and will remain so for as long as Section 76.501(a) of the Rules is applicable. Accordingly, argues Whitcom, Mr. Paley could not easily limit State's systems' diversity of programming, even were he motivated to try to do so. Moreover, asserts Whitcom, grant of the requested waiver will not hinder the development of cable networks, for "as of June 30, 1982 there were over *forty* cable television networks available to over 230 million subscribers in the aggregate," (footnote omitted), as the Commission recognized in *CBS Inc.*, FCC 81–391, 87 FCC 2d 587 (1981). Whitcom contends that it is in its

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[2] Whitcom states that "State does not carry any CBS affiliate which is not entitled to request mandatory carriage under the FCC rules." (footnote omitted).

[3] Whitcom states that one of State's systems will introduce an additional service, Cinemax, in October 1982. In addition, no State system had been affiliated with CBS Cable.

and State's best interests to offer a variety of both broadcast and non-broadcast programming, and this will continue to be done.

4. Whitcom further argues that the proposed cross interest is *de minimis*, because State accounts for less than six percent of Whitcom's total assets, and less than fifteen percent of WCC's assets. Whitcom describes itself as ". . . a diversified investment partnership," holding over $20,000,000 in government and other long and short term debt instruments; over $5,000,000 in stock in National Data Corp.; a one-third interest in the *International Herald Tribune*; 100 shares of non-voting stock of Capital Cities Cable of Delaware, Inc.,[4] the corporate parent of Cablecom-General, Inc.; and a ten percent limited partnership interest in Communications Resources, a producer of films for cable television. WCC's magazine division publishes nine special interest periodicals. In addition, WCC owns a controlling interest in WCC Newspapers, Inc., which publishes twenty-five community newspapers in Maryland and Delaware, reaching over 250,000 households. Citing *Cable Vision*, August 23, 1982, at 163, Whitcom notes that there were 24,242,000 basic cable subscribers as of May 31, 1982, and therefore State's 24,300 subscribers account for approximately 0.1% of the nation's cable subscribers, less than the limited threshold entry allowed CBS in *CBS Inc., supra.*

5. In addition, Whitcom submits an affidavit from Mr. Paley in which he states that, pending the elimination of Commission restrictions on his full participation in Whitcom, Mr. Paley will not:

1) serve as an officer or director of State Cable TV Corporation or any other entity which directly operates cable television systems and in which Whitcom holds an interest;
2) vote or participate in the discussion of any matter coming before the Whitcom partnership or an of its subsidiaries regarding cable television;
3) increase his interest to be obtained in Whitcom's cable holdings to ten percent or more; nor
4) be allowed to sell his interest in Whitcom to any outside party, and thus will not be able to use the threat of sale for any indirect influence.

Whitcom argues that although Whitcom is a partnership and not a corporation, thus eliminating the possibility of utilizing certain structural insulation mechanisms, the foregoing structures sufficiently insulate Mr. Paley's interests.[5] Whitcom notes that "State is essentially an autonomous

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[4] The voting stock of Capital Cities Cable of Delaware, Inc. is owned by Capital Cities Communications, Inc.

[5] Whitcom cites, *inter alia*, *Wolverine Cablevision, Inc.* (Battle Creek, Michigan), FCC 78–774, 69 FCC 2d 1487 (1978), *modified*FCC 81–300, 89 FCC 2d 1112 (1981); *Bonneville International Corp.*, FCC 77–832, 68 FCC 2d 933 (1977); *Television Wisconsin, Inc., et al.*, FCC 77–830, 68 FCC FCC 2d 1028 (1977).

subsidiary," whose general manager is Mr. Albert G. Meyer. "Operating management reports to the officers and directors of State," states Whitcom, "and Mr. Paley will not serve in either capacity."[6] Whitcom asserts that Mr. Paley's principal activity at the partnership will be as President of IHT Corp. (a Whitcom subsidiary holding a one-third interest in the *International Herald Tribune*), and as a Whitcom representative on the *International Tribune's* board.

*Discussion*

6. Based upon the particular facts and circumstances of the instant case, we find that a grant of the requested waiver would be in the public interest. In making this determination we note that Mr. Paley's influence over State Cable TV Corporation will be porportionately reduced by the fact that Whitcom is a partnership with nine members beside Mr. Paley who have a fiduciary responsibility to protect the corpus of the partnership. Additionally, we note Whitcom's pledge of non-involvement on the part of Mr. Paley in State Cable TV Corporation's operations. In this regard, Whitcom has assured the Commission that Mr. Paley (1) will not serve as an officer of director of State Cable TV Corporation; (2) will not vote or participate in the discussion of any matter before the Whitcom partnership regarding cable television; (3) will be limited to an ownership interest in Whitcom's cable television holdings below 10%; and (4) will not be allowed to sell his interest in Whitcom to any outside party. Lastly, we note that the 90,000 subscribers that State Cable TV Corporation would be allowed to serve under our decision today represent less than four tenths of one percent of all cable subscribers in the nation.[7] In view of the above, we believe that the special relief requested would have a negligible compact upon the public interest considerations which from the basis of the Commission's network cross ownership rule.

In view of the foregoing, we find that grant of the requested waiver is in the public interest.

Accordingly, IT IS ORDERED, That the "Petition for Special Relief" filed September 13, 1982, by Whitcom Investment Company IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

William J. Tricarico *Secretary*

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[6] Whitcom identifies Mr. Edward L. Barlow, President of State, as the Whitcom partner generally responsible for overseeing State's operation.

[7] Regarding the cable systems currently served by State Cable TV Corporation, we note that with one exception the cable systems are generally mature systems carrying a wide diversity of programming thus diminishing the possibility that their construction or operation would be impeded out of an anti-competitive motivation.



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